1424-107

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 159.

JOHNSON N. CAMDEN, APPELLANT,

vs.

WILLIAM A. STUART; W. W. GORDON AND ISAAC H. CARRINGTON, TRUSTEES; ET AL.

FILED OCTOBER 6, 1888.

No. 643.

WILLIAM A. STUART, APPELLANT,

vs.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

FILED JANUARY 14, 1890.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Order making Gordon & Carrington parties complainants	5	3
Order granting leave to file cross-bill, appointing master, &c.	6	4
Answer to cross-bill	8	5
Answer of Greenbrier White Sulphur Springs Co.	10	6
Cross-bill of " " " " "	12	7
Notice of taking account, &c.	14	9
Order to take account, &c.	15	10
Order on receiver's report	16	10
Master's report	18	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 28, 1891.

	Original.	Print.
Evidence filed with master's report	74	55
Testimony of H. N. Gordon	74	55
G. B. Davenport	75	56
Wm. H. White	76	56
John P. Branch	76	57
Oscar Cranz, jr.	77	57
A. Salle Watkins	78	57
B. H. Turner	78	58
J. F. Swetman	79	58
Russel W. Montague	79	58
W. A. Stuart	81	59
Exhibits to Stuart's testimony, notes, accounts, &c.	88	64
Testimony of C. W. MacFarland	98	71
J. R. Parker	98	71
Exhibit C. O. No. 1—Decree in Ogle *v.* G. W. S. S. Co.	99	72
R. W. M. No. 3—Promissory note to Peterkin, June 15, 1881	101	73
No. 5—Promissory note to Peterkin, June 15, 1881	102	74
No. 4—Promissory note to Peterkin, June 15, 1881	102	74
No. 2—Trustee's report of sale	103	75
No. 1—Trust deed of December 22, 1881	103	75
B. L. No. 1—Decree in Bank of Lewisburg *v.* Stuart *et al.*	106	76
G. W. S. S. Co.—Deed of Stuart to G. W. S. S. Co., March 17, 1882	109	78
T. E.—Letter Ellett to Gallaher, June 17, 1884	112	81
Order re-committing report of Com'r Gallaher	114	81
Master's second report	117	83
Statement of sundries supplied by H. Phœbus during season of 1883	149	106
Statement of wages paid by H. Phœbus from Dec. 9, 1882, to Nov. 8, 1883	159	112
Statement of sundries supplied by H. Phœbus during season of 1883	181	125
Itemized statement of expense account, season of 1883	193	133
bar bills, " "	200	138
farm and livery expenses " "	202	139
coal and gasoline bills, " "	205	141
advertising bills, " "	206	141
furniture bills, " "	208	143
building and repairs, " "	210	144
Statement of receipts, disbursements, and profits	213	146
Testimony of Wm. A. Stuart	216	148
Letter of Fitzhugh to Gallaher, May 14, 1885	254	171
Ellett " " May 15, 1885	256	172
Memorandum of H. H. Marshall	258	173
Exhibit J. P. B., "B"—Letter of Branch & Co. to Gallaher, April 14, 1884	259	174
"A"—Letter of Branch & Co. to Gallaher, April 4, 1884	260	174
Testimony of John W. Kerr	260	174
Exhibit D. F. M.—Acct. of Mohler & Sons, March 16, 1885	261	175

	Original.	Print.
Testimony of D. F. Mohler	262	175
Exhibit G. P.—Agreement between Peyton & Stuart, Jan. 30, 1880	262	176
Testimony of George L. Peyton	264	177
Exceptions of unsecured creditors to master's report	277	184
" " " " "	282	187
Order on petition of Knabe & Co.	283	188
Petition of Knabe & Co.	284	188
Order to treat petition of Knabe & Co. as bill in chancery	296	195
Answer of Carrington, trustee, to petition of Knabe & Co.	296	195
Stuart, " " " "	299	196
Order of reference to W. J. Leake, master	308	202
Report of W. J. Leake, master	311	204
Testimony of Wm. A. Stuart	343	227
John M. Price	358	237
George C. Lafferty	359	238
John C. Wood	361	239
Wm. A. Stuart (resumed)	369	243
George L. Peyton	371	244
John W. Kerr	372	245
Wm. A. Stuart (recalled)	381	250
F. R. Scott	382	250
Wm. A. Stuart (recalled)	387	254
George L. Peyton (recalled)	388	254
Wm. A. Stuart (recalled)	391	257
George L. Peyton (resumed)	391	257
H. B. Boudar	399	262
Wm. A. Stuart (recalled)	403	264
Exhibit J. W. K. No. 1—Receipt for bonds, April 29, 1882	406	266
No. 2—Letter of Wood to Branch, Sept. 11, 1882	407	267
No. 3—Letter of Wood to Branch, Sept. 16, 1882	407	267
No. 4—Letter of Mathews to Branch, July 5, 1882	408	268
No. 5—Letter of Mathews to Branch, Sept. 27, 1882	408	268
No. 6—Sight draft of Mathews, May 1, 1882	408	268
No. 7—Extract from def't Co.'s cash-book, etc.	409	269
Exhibit "Balance Sheet"—Balance sheet of def't Co., Oct. 30, 1880	415	274
J. C. W.—Account of Wood for services	418	276
J. W. K. No. 10—Collateral note of Kerr, April 29, 1882	418	276
No. 11—Certificate of stock of Jno. W. Kerr	419	277
F. R. S. No. 1—Letters of Branch & Co. to Mathews, April 29, 1882, &c.	420	277
No. 2—Promissory note to Stacy, June 26, 1882	424	280
No. 3— " " " Aug. 28, 1882	424	280
No. 4— " " Branch & Co., Aug. 1, 1882	425	280
No. 5—Promissory note to Branch & Co., Sept. 1, 1882	425	281
No. 6—Promissory note to Self, Sept. 29, 1882	426	281

	Original.	Print.
Exhibits to Peyton's testimony—Agreement, &c., between Peyton & Stuart	426	282
Exhibit Boudar No. 1—Trial balance, Dec. 31, 1880, &c.	429	284
No. 2—Statement of business for year 1880	436	290
Copies of decrees, &c., in case Gay, *et al.*, *vs.* White Sulphur Springs Co., *et al.*	440	294
Letter from Jasper Y. Moor to W. J. Leake, April 22, 1887	458	306
Exhibit J. W. M. No. 2—Letter J. W. Mathews to W. A. Stuart, Jan. 6, 1887, and enclosures	458	306
No. 1—Statement of amount paid Stuart	466	312
Exceptions of Merchant's National Bank to master's report	470	314
Thos. Branch & Co. to master's report	471	315
Wm. A. Stuart to master's report	472	316
Unsecured creditors to master's report	485	324
Order for sale of property	489	327
Order allowing Camden to file petition	491	328
Petition of Johnson N. Camden	492	329
Order allowing Camden to file exceptions	499	333
Report of sale	500	333
Order filing answer of Camden, &c.	507	334
Answer of Camden	507	338
Exhibit J. K. C.—Resolution	510	340
Order filing general replication *nunc pro tunc*	512	341
Order granting leave to waive exceptions	512	341
Order confirming sale, &c.	513	342
Opinion	518	345
Final decree	523	348
Order allowing Camden's appeal	528	351
Bond on appeal of Camden	529	352
Clerk's certificate	531	353
Order allowing Stuart's appeal	532	353
Bond on appeal of Stuart	532	353
Clerk's certificate	534	354

1 On the 10th day of April, 1883, William A. Stuart filed in the clerk's office of the circuit court of the United States for the district of West Virginia his bill of complaint, which is in words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America for the District of West Virginia, at Parkersburg, West Virginia.

WILLIAM A. STUART, Who Sues on Behalf of Himself and All Other Creditors of the Greenbrier White Sulphur Springs Company Who Will Come in and Contribute to the Costs of This Suit,

vs.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, W. W. GORDON, and ISAAC H. CARRINGTON, Trustees.

To the honorable judges of the circuit court of the United States for the district of West Virginia:

William A. Stuart, a resident and citizen of the State of Virginia, bring- this his bill of complaint against the Greenbrier White Sulphur Springs Company, a corporation chartered, duly organized, and doing business under the laws of the State of West Virginia, in said State of West Virginia, with its office and place of business at the Greenbrier White Sulphur Springs, Greenbrier county, State of West Virginia, and W. W. Gordon and Isaac H. Carrington, trustees, citizens and residents of the city of Richmond, State of Virginia; and thereupon your orator complains and says that the said The Greenbrier White Sulphur Springs Company, by their certain deed, bearing date the sixth day of April, A. D. 1882, and duly recorded, conveyed to William W. Gordon and Isaac H. Carrington, trustees, the White Sulphur Springs property, located in Greenbrier county, State of West Virginia, containing seven thousand acres, more or less, and all the personal property thereon, and the interest of said company in twenty-eight hundred acres of land located in
2 Alleghany county, State of Virginia; all of which will more particularly and accurately appear by reference to a duly authenticated copy of said deed, marked Exhibit "A," filed with this bill, and prayed to be taken as a part thereof, in trust to secure the prompt and faithful payment of four hundred bonds for five hundred dollars each, aggregating two hundred thousand dollars; which said bonds bear date the fifteenth day of April, A. D. 1882, and are payable at the agency of said company in the city of Richmond, Virginia, on the fifteenth day of April, in the year one thousand nine hundred and twelve, but redeemable after fifteen years from the date thereof, at the option of said company, with interest thereon from the date of said bonds, at the rate of six per cent. per annum, payable at the said agency in the city of Richmond on the fifteenth

day of September of each year, excepting the last installment of interest, which is payable on the 15th day of April, A. D. 1912, said interest payable on the surrender of the coupons for said interest attached to said bonds.

Your orator is the holder for value of one hundred of said bonds, aggregating fifty thousand dollars.

The coupons for the interest on said bonds so held as aforesaid by your orator, due and payable on the 15th day of September, A. D. 1882, aggregate twelve hundred and fifty dollars, the payment whereof your orator has demanded at the agency of the said The Greenbrier White Sulphur Springs Company in the city of Richmond, State of Virginia, and the payment of the same was refused and declined by reason of the want of funds on the part of the said The Greenbrier White Sulphur Springs Company to pay the said coupons due and payable on the 15th day of September, A. D. 1882, as aforesaid.

Your orator would represent that the said The Greenbrier White Sulphur Springs Company have wholly made default in the payment of the coupons for interest due and payable on the fifteenth day of September, 1882, on its said bonds for two hundred
3 thousand dollars. Wherefore your orator is advised and informed that he has the right to apply to this honorable court to have the property, both real and personal, conveyed by the aforesaid deed of the Greenbrier White Sulphur Springs Company to William W. Gordon and Isaac H. Carrington, trustees, of the sixth day of April, 1882, sold as this honorable court may direct, and the proceeds arising from such sale appropriated to the satisfaction of the claims and demands against the said The Greenbrier White Sulphur Springs Company in the order of their priority.

Your orator would represent that he is advised that upon the real estate conveyed in the said deed of the Greenbrier White Sulphur Springs Company to the said William W. Gordon and Isaac H. Carrington, trustees, there are other liens superior by virtue of their priority to the aforesaid lien of your orator as the holder of said bonds.

Your orator would further represent that by reason of the various liens upon said property and the claims against the said The Greenbrier White Sulphur Springs Company, the property of the said company can only be sold to the advantage of the creditors of the said company by a decree of a court of competent jurisdiction, after a report of the liens upon said property shall first have been taken and confirmed.

In tender consideration whereof and inasmuch as your orator is without adequate remedy save by the aid of a court of equity, where matters of this character are peculiarly and justly cognizable, to the end therefore that justice may be done, your orator prays:

First. That the Greenbrier White Sulphur Springs Company, William W. Gordon and Isaac H. Carrington, trustees, may be made parties defendants to this bill and required to answer each allegation thereof under oath.

Second. That it may be referred to one of the commissioners of this honorable court to take an account of all the property of the said The Greenbrier White Sulphur Springs Company, both
4 real and personal, and the liens thereon, their amount, character, and priority.

Third. That said commissioner may be required to report the names of the stockholders of said company, the number of shares owned by each, the par value of the same, and the amounts due and unpaid by each of said stockholders.

Fourth. That said commissioner may be required further to report an account of all the unsecured claims and demands against the said company.

Fifth. That unless the coupons so held by your orator for interest overdue and unpaid shall be paid within a reasonable time, then that the property of said company be sold by and under decree of this honorable court, and the proceeds applied to the satisfaction of the liens thereon, including the lien of your orator as aforesaid.

Sixth. That, pending this suit, should the interests of the creditors of the said The Greenbrier White Sulphur Springs Company so require, as may be hereinafter determined, this honorable court will take possession and control of the property of said company, real and personal, and appoint a receiver to manage the same as may seem best to protect and subserve the rights and interests of all parties concerned therein, and that your orator may have all such other and further relief in the premises as the nature of this case may require and as to equity shall seem meet.

W. A. STUART,
By Counsel.

THOS. TABB,
Sol'r for Compl't.

5 And on another day, to wit, on the 10th day of May, 1883, the following order was made and entered of record, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

WILLIAM A. STUART, Pl'tiff,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, WILLIAM W. GORDON, Trustee, & ISAAC H. CARRINGTON, Trustee. } In Equity.

On the motion of the plaintiff, he has leave to dismiss his bill as to the def'ts William W. Gordon and Isaac H. Carrington, which is accordingly done.

And on the motion of the said William W. Gordon and Isaac H. Carrington, trustees, as set forth and described in the bill, and with the consent of the plaintiff endorsed hereon, they are admitted as plaintiffs in this suit; and it is ordered that the said suit hereafter

proceed in the names of William W. Gordon and Isaac H. Carrington, trustees, as plaintiffs.

We consent to this decree.

(Signed) THOMAS TABB, *Att'y for W. A. Stuart.*
ISAAC H. CARRINGTON.
WM. W. GORDON.
THE G. WHITE SULPHUR SPRINGS CO.,
By JAMES H. DOOLEY, *Counsel.*

6 And on another day, to wit, on the 14th day of January, 1884, the following order was made and entered of record, to wit:

W. A. STUART, on Behalf of Himself and All the Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, Defendants.
} In Equity.

On motion of the defendant company, leave is given to it to file its answer to the complainants' bill, which is accordingly done, and the complainants reply thereto generally; and on the like motion of the defendant company, leave is given it to file its cross-bill in this cause, which is accordingly done; and thereupon, upon motion of the said complainants, W. A. Stuart and W. W. Gordon and Isaac H. Carrington, trustees, leave is given them to file their joint and several answers to the said cross-bill, which is accordingly done; and the said defendant company, the complainant in said cross-bill, replied to said last-mentioned answer generally, and this cause came on to be heard at this term by consent of parties and was argued by counsel. On consideration thereof, it is adjudged, ordered, and decreed as follows, viz:

That D. C. Gallagher, who is hereby appointed a master for the purpose, shall ascertain and report to the court with all convenient speed—

I. What liens and encumbrances exist on the property of the defendant company; whether such liens and encumbrances
7 exist by virtue of the deed of trust of the 6th day of April, 1882, or otherwise; also the amounts of such liens and encumbrances, to whom coming, and the order and priority thereof, respectively.

II. Also to ascertain and report what is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of such claims and to whom the same are respectively coming.

III. And the said master is also further directed to ascertain and report what property, assets, and estate is held and owned by the said defendant company of every kind.

IV. And the said master is further directed to make report as to the several matters above mentioned, together with any other matter or thing deemed pertinent by himself, or which any party or person interested shall require to be specially stated.

V. The said master shall give due notice to the parties to this cause of the time and place fixed by him for executing this order, and he shall give further notice of said time and place by publication in some newspaper published in —, at least once a week for four successive weeks, and in the said publication he shall warn all creditors of the said defendant company to come before him and present to him their claims and the evidence to support the same on or before some day and at some place in said — to be designated by said master in said publication, and that unless said creditors shall so come in and prove their claims they shall be barred from any benefit under this order.

(Signed) HUGH L. BOND, *C't Judge.*

Jan'y 9th, 1884.

8 And on another day, to wit, on the 14th day of January, 1884, the following answer to cross-bill was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

W. A. STUART, on Behalf of Himself and All the Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, Defendant.
} In Equity.

The joint and several answer of the said W. A. Stuart and the said W. W. Gordon and Isaac H. Carrington, trustees, to a cross-bill filed in the above-named cause by the said Greenbrier White Sulphur Springs Company against them, the said Stuart and the said Gordon and Carrington, trustees.

These respondents, saving and reserving the full benefit of exception to the said cross-bill, for answer thereto, or to so much thereof as they are advised it is material for them to answer, answer and say that they admit the allegations of said cross-bill to be true, so far as they know and as they believe, and they unite in the prayer of said cross-bill for the settlement of the assets and liabilities of said Greenbrier White Sulphur Springs Company and for such relief in the premises as may be right and proper.

And, having fully answered, these respondents pray to be hence dismissed with their reasonable costs.

(Signed) W. A. STUART.
ISAAC H. CARRINGTON.
W. W. GORDON.

WM. J. ROBERTSON,
EDW. H. FITZHUGH,
Counsel for Respondents.

9 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

Personally appeared before the subscriber, a notary public in and for the said city, W. A. Stuart and Isaac H. Carrington, who severally made oath before me, in my said city, that the statements in the foregoing answer, so far as the same are made on their own knowledge, are true, and so far as the same are made on the information of others they believe them to be true.

(Signed) ROGER B. ATKINSON, *N. P.*

10 The answer referred to in the foregoing order is in words and figures, following, to wit:

In the United States Circuit Court for the District of West Virginia, at Parkersburg.

W. A. STUART, in Behalf of Himself and All the Other Creditors of the Greenbrier White Sulphur Springs Co. Who May Come in and Contribute to the Costs of Suit; W. W. Gordon and Isaac H. Carrington, Trustees, Plaintiffs;
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO., Defendant.

The answer of the Greenbrier White Sulphur Springs Co. to a bill of complaint exhibited against it in the United States circuit court for the district of West Virginia, at Parkersburg, by W. A. Stuart, on behalf of himself and other creditors, in which bill W. W. Gordon and Isaac H. Carrington, trustees, have been made coplaintiffs.

This respondent, saving and reserving, &c., for answer to the said bill says that it is true that it did, on the 6th day of April, 1882, execute a deed of trust conveying to the said W. W. Gordon and Isaac H. Carrington, as trustees, certain real and personal property, to secure the payment of the bonds mentioned in the said bill; also that the plaintiff, W. A. Stuart, is one of the holders and owners of the said bonds; also that the interest upon the said bonds is due and unpaid, as charged in the said bill.

But this respondent represents and avers that, in addition to the bonds secured by the said deed of trust, it owes many and large debts to various persons, some of which debts are secured and some

are unsecured; some of which are prior in dignity and some subsequent in dignity to the debt secured by the deed of trust
11 mentioned in the said bill.

When the said bill was exhibited this respondent had good reason to hope and believe that by making judicious leases of its property it would be able to provide means for the payment of all of its debts, secured and unsecured. The result, however, of the operations of the last season have convinced it that its debts cannot be paid without a sale of the property.

If, however, the property is to be sold under decree of this court, the company will have no resources left with which to carry on its business or to pay its creditors, and the corporation must be wound up.

Respondent therefore asks, in justice to its creditors other than the said bondholders, that an account may be taken in this cause of all of its liabilities and of all of its assets, in order that the said assets or the proceeds thereof may be distributed amongst all of its creditors, according to their respective rights, and under the supervision and direction of this court.

To that end respondent prays that this its answer may be treated as a cross-bill and may be given all the force and effect of a cross-bill; or if the court should deem it necessary to do so, then it prays that leave may he given it to file a cross-bill in this cause.

And, having fully answered, it prays to be hence dismissed, &c.

VIRGINIA, }
City of Richmond, } *To wit:*

This day Jno. P. Branch, a director of the Greenbrier White Sulphur Springs Company, personally appeared before the undersigned, a notary public in and for the city aforesaid, and made oath that the facts stated in the foregoing answer, so far as made on his own knowledge, are true, and so far as made on information derived from others he believes them to be true.

Given under my hand this 4th day of January, 1884.

(Signed) JNO. H. HAMPTON, *N. P.*

12 The cross-bill referred to is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, Plaintiff, }
vs. }
W. A. STUART, W. W. GORDON, and ISAAC H. CARRINGTON, the Latter Two as Trustees, Defendants. }

To the honorable judge of the circuit court of the United States for the district of West Virginia:

The Greenbrier White Sulphur Springs Co., a corporation chartered under the laws of the State of West Virginia, brings this its

cross-bill against W. A. Stuart and W. W. Gordon and Isaac H. Carrington, the latter two as trustees, citizens of the State of Virginia.

And thereupon your orator complains and says that the said W. A. Stuart heretofore, viz., on the — day of ——, 188–, filed his bill on behalf of himself and all other creditors of your orator in this court, to which bill your orator and W. W. Gordon and Isaac H. Carrington, trustees, were made parties defendant, but the said Gordon and Carrington were afterwards made coplaintiffs with said W. A. Stuart. By the said bill it was charged that your orator did, on the 5th day of April, 1882, convey to W. W. Gordon and Isaac H. Carrington, trustees, certain property in trust to secure 400 bonds for the sum of $500 each, amounting in the aggregate to the sum of $200,000, a copy of which deed was filed with said bill; also that the interest upon the said bonds, which accrued on the 15th of Sept., 1882, was due and unpaid, and the said bill prayed that the lien of the said deed upon the said property might be enforced. At the time of the filing of the said bill your orator had good reason to hope and believe that by making judicious leases of its property all of its debts, secured and unsecured, could be provided for without sale.

13 But the operations of the last season, during which the property was leased under the order of this court, have convinced your orator that all of its debts cannot be provided for by leasing the property.

You orator therefore considers it proper to represent and show to the court that in addition to the bonds secured by the deed of trust in the said bill mentioned it owes many and large debts to various persons, some of which debts are secured and some are unsecured; some of which are prior in dignity and some subsequent in dignity to the debt secured by the said deed.

If, however, the property is to be sold under decree of this court the company will have no resources left with which to carry on its business or to pay its creditors, and the corporation must be wound up.

Your orator, having filed its answer to the said bill, therefore prays that the said W. A. Stuart and W. W. Gordon and Isaac H. Carrington, the latter two as trustees, may be made parties defendant to this cross-bill; that an account may be ordered to be taken in this cause of all its liabilities and of all its assets; that, if a sale be deemed necessary, the said assets, or the proceeds thereof, may be distributed amongst all its creditors according to their respective rights, and under the supervision and direction of this court, and for such other and further and general relief as to equity may seem meet or as the nature of your orator's case may require; and it will ever pray, &c.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By JAMES H. DOOLEY, *Counsel.*

And on another day, to wit, on the 30th day of June, 1884, the report of D. C. Gallaher, special comm'r, with the depositions and exhibits, was filed in the clerk's office of said court; which
14 report and depositions are in words and figures following, to wit:

Notice of Taking Account and Report.

In the United States Circuit Court for the District of West Virginia, at Parkersburg.

W. A. STUART, on Behalf of Himself and All Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, Complainants,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et als.*, Defendants. } In Equity.

By virtue of a decree entered in said cause by said court January 9th, 1884, the undersigned, appointed a master for that purpose, will, Tuesday, March 18, 1884, at 10 a. m., at the law office of Johnston, Williams & Boulware, No. 1104 Main street, Richmond, Virginia, proceed to ascertain and report—

1st. What liens and encumbrances exist upon the property of the defendant company; whether such liens and encumbrances exist by virtue of the said deed of trust of the 6th of April, 1882, or otherwise; also the amount of such liens and encumbrances, to whom owing, and the order and priority thereof respectively.

2nd. Also what is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of such claims and to whom the same are respectively due.

3rd. What property, assets, and estate *is* held and *and* owned by the said defendant company of every kind.

15 4th. Any other matter or thing deemed pertinent by the undersigned or which any party or person interested shall require to be specially stated.

5th. At the same time and place I shall proceed to audit and settle the account of the transactions of Harrison Phoebus, late lessee of said defendant company, as such lessee

By virtue of said decree all creditors of said defendant company are hereby warned to come in before the undersigned and present their claims and the evidence to support the same, and unless they shall so come in and prove their claims they shall be barred from any benefit under the decree aforesaid. The taking of the said accounts shall be, for cause, adjourned from time to time until completed.

Given under my hand this 12th February, 1884.

(Signed) D. C. GALLAHER,
Master U. S. Circuit Court.

We accept service of the foregoing notice.

THE GREENBRIER WHITE SULPHUR SPGS CO.,
By JAMES H. DOOLEY, *Att'y.*
I. H. CARRINGTON, *Trustee,*
By E. H. FITZHUGH, *His Counsel.*
WM. W. GORDON.
TAZEWELL ELLETT.
H. PHOEBUS.

In the Circuit Court of the United States for the District of West Virginia.

WM. A. STUART & *als.*
vs.
THE GREENBRIER WHITE SUL. SPRINGS CO.

On consideration of the petition of the Greenbrier White Sulphur Springs Company this day filed, it is ordered that D. C. Gal-
16 laher, heretofore appointed by an order of this court a special commissioner in this cause to take, state, and report certain accounts in said order mentioned, do adjourn at once the taking of said accounts from Richmond, Va., to the Greenbrier White Sulphur Springs, West Va., — after receiving proofs of claims of indebtedness against the def't Co., then and there proceed with the taking of the same until the taking thereof is fully completed.

(Signed) J. J. JACKSON,
Dist. Judge.

MARCH 15, 1884.

Copy.
Teste: L. B. DELLICKER,
Clerk Circuit Court U. S., Dist. W. Va.

In the Circuit Court of the United States, District of West Virginia.

W. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.*

Upon motion of the plaintiffs and on consideration of the report of A. L. Boulware, Esq., receiver, &c., this day filed, it is ordered by the court that the same be approved and confirmed; and it is further ordered that Harrison Phoebus, late lessee of the property of the defendant company, within sixty day- (60) from the date of this decree, do render an account of his transactions as such lessee before D. C. Gallaher, who is hereby appointed a special master to state and report said account to the court; and he is hereby directed to give ten days' notice of the time and place of taking said account to all parties interested.

And it is further ordered that said receiver shall, with all
17 convenient speed and after due notice, rent out the property of the defendant company, with all the rights, privileges, and

appurtenances thereto belonging, at public auction, in the city of Richmond, for the term of one year, upon such terms as he may deem most advantageous to the interests of all concerned; but if upon trial the said property cannot be rented at public auction, then the said receiver is authorized to rent out the same privately; but whether rented publicly or privately, the lessee is not to take possession or have any benefit of said renting until the same shall be reported to and approved by this court.

And it is further ordered that the said receiver shall, without unnecessary delay, proceed to make public sale upon the premises, for cash, of all horses, cattle, and hogs belonging to the defendant company not essential, in his opinion, to the due administration of the properties in his hands, first giving reasonable notice of the time, place, and terms of such sale.

(Signed) HUGH L. BOND, *C't Judge.*

JAN'Y 9TH, 1884.

Copy.
Teste: L. B. DELLICKER,
Clerk Circuit Court U. S., Dist. W. Va.

18 In the United States Circuit Court for the District of West Virginia.

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. } In Equity.

Master's Report.

CHARLESTON, *June 2nd*, 1884.

To the hon. the United States circuit court for the district of West Virginia:

By a decree rendered therein in said court on the 9th day of January, 1884, this cause was referred to the undersigned to make, state, and report an account showing matters as follows:

1st. What liens and encumbrances exist upon the property of the defendant company, whether such liens and encumbrances exist by virtue of the said deed of trust of the 6th day of April, 1882, or otherwise; also the amount of such liens and encumbrances, to whom owing, and the order and priority thereof respectively.

2nd. Also what is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of such claims and to whom the same are respectively coming.

3rd. What property, assets, and estates *is* held and owned by the said defendant company of every kind.

4th. Any other thing or matter deemed pertinent by me or which any party or person interested shall require to be specially stated.

19 5th. The auditing and settlement of the account of transactions of Harrison Phoebus, late lessee of said defendant company, as such lessee.

The Notice.

Said decree required notice to be given of the time and place of the taking of said account.

Immediately upon receipt of information that said cause was referred to the undersigned, he wrote for and obtained from the clerk of the court copies of the decrees of reference and corresponded with all the attorneys he could and parties supposed to be interested, consulting with them as to the time and place to be adopted.

From all who were supposed to be interested the opinion was expressed in favor of Richmond, Virginia, and as the master had indicated his preference to take the account as soon as practicable, it was agreed that Richmond, Va., and Tuesday, March 18, 1884, should be the time and place.

Appended herewith is an acceptance of service of notice and made part hereof.

Notice was published in the "Richmond Dispatch," as well as in the "Kanawha Gazette," the one in Richmond, Virginia, the other in Charleston, West Virginia.

Copies of said advertisements are herewith presented on next page.

No. 1.

In the United States Circuit Court for the District of West Virginia, at Parkersburg.

W. A. STUART, on Behalf of Himself and All Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et al.*, Defendants.
} In Equity.

By virtue of a decree entered in said cause by said court January 9, 1884, the undersigned, appointed a master for that purpose, will, Tuesday, March 18, 1884, at 10 a. m., at the law office of Johnston, Williams & Boulware, No. 1104 Main street, Richmond, Virginia, proceed to ascertain and report—

1st. What liens and encumbrances exist upon the property of the defendant company; whether such liens and encumbrances exist by virtue of the said deed of trust of the 6th day of April, 1882, or otherwise; also the amount of such liens and encumbrances, to whom owing, and the order and priority thereof respectively.

2nd. Also what is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of such claims and to whom the same are respectively coming.

3rd. What property, assets, and estate *is* held and owned by the said defendant company of every kind.

4th. Any other matter or thing deemed pertinent by the undersigned, or which any party or person interested shall require to be specially stated.

5th. At the same time and place I shall proceed to audit and settle the account of the transactions of Harrison Phoebus, late lessee of said defendant company, as such lessee.

By virtue of said decree all creditors of said defendant company are hereby warned to come in before the undersigned and present their claims and the evidence to support the same, and unless they shall so come in and prove their claims they shall be barred from any benefit under the decree aforesaid.

The taking of the accounts aforesaid shall be, for cause, adjourned from time to time until completed.

21 Given under my hand this 12th February, 1884.

D. C. GALLAHER,
Master United States Circuit Court.

RICHMOND, VA., —— —, 188-.

Mr. W. A. Stuart to the Dispatch Company, Dr.

1884.
Feb'y 14. To adv. court order on behalf of self and all other creditors of the Greenbrier White Sulph. Springs Co., &c., *vs.* The Greenbrier White Sulph. Springs Co., &c., 4 inches, Th., 4 t. ---------- -------- $16

No. 2.

W. A. STUART, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

Mr. D. C. Gallaher, commissioner appointed in the above cause, will be in Richmond to-morrow (Wednesday, 28th) for the purpose of taking further proofs of debts.

Any party who has heretofore omitted to prove his claim or may desire to make further proof before him will please call on him at the office of Johnston, Williams & Boulware, between the hours of 9 a. m. and 4 p. m. of that day.

Both of the above notices were published in the "Daily Dispatch," Richmond, Va.

No. 1 having been published for four successive weeks prior to March 18, 1884.

The 2nd one was published the 27 May, 1884.

The notices were published for four (4) successive weeks in each paper, and the decree in that respect was complied with, as well as in all respects. For obvious reasons Richmond was selected,

22 especially as it was by far the most convenient to a large majority of those interested.

(Same notice as before.)

GAZETTE OFFICE,
CHARLESTON, WEST VIRGINIA, *June* 22, 1884.

I, James B. Pemberton, editor of the Kanawha Gazette, a newspaper published in Kanawha county, State of West Virginia, hereby certify that the annexed notice was published in said gazette for four successive weeks, commencing February 13, 1884.

(Signed) J. B. PEMBERTON.

Printer's fee, $12.50.

Accordingly the undersigned proceeded to Richmond, Virginia, and at 10 a. m. Tuesday, March 18, 1884, at the office of Johnston, Williams & Boulware, as per notice, opened the account and proceeded to carry out the decree aforesaid. Various parties came before him and proved their claims.

On the 22nd inst., by reason of an order herewith filed, the undersigned was compelled to adjourn the further taking of testimony, &c., to the White Sulphur Springs. This he did to March 31, 1884, where Mr. Phoebus' representative alone attended, and as it was seen to be advisable for all reasons the undersigned again adjourned the Phoebus account, all parties thereafter agreeing to Aug. 4, 1884, to the White Sulphur Springs, as indicated in said order received March 22, 1884. The undersigned made two trips to the White Sulphur Springs to examine the books of the company, and, with rare exceptions, found the books to correspond with and vouch for correctness of the accounts filed. This saved
23 much time and expense. Again, at suggestion of some of the parties, I went to Richmond, Va., for the purposes indicated in the annexed notice.

(See next preceding page for notice.)

An almost interminable correspondence was required to instruct claimants and counsel as to how, when, and where to prove claims.

The undersigned is satisfied all the claims allowed are justly due and sufficiently proven.

In addition to the books showing the liabilities, the book-keeper had made off a list of bills payable and accounts due, and this I compared with the individual accounts upon the books, and in this way obtained the best evidence of correctness of the claims.

The receiver, A. L. Boulware, Esqr., as well as the springs company, afforded me every facility to get at the correct indebtedness of the company, and I believe this report shows it as it should be.

It certainly shows all claims to which my attention has been called in the remotest degree, and still no claim has been allowed that was not fully examined and compared with the books and papers of the said company or proven otherwise.

I.

1st requirement.

What liens and encumbrances exist upon the property of the defendant company; whether such liens and encumbrances exist by virtue of said deed of trust of the 6th April, 1882, or otherwise; also

the amount of such liens and encumbrances, to whom owing, and the order and priority thereof respectively.

All debts are calculated with interest to June 1, 1884.

24 *Note.*

Under a decree in the United States district court for the district of West Virginia all of the property known as the White Sulphur Springs Company was sold and conveyed by special commissioners, A. C. Snyder and others, to W. A. Stuart in the chancery suit of Gay and others *vs.* White Sulphur Springs Company and others.

I have examined the papers in said cause and among them find that said Stuart gave a vendor's lien for five bonds, executed March 31, 1880, each for the sum of $61,290.00, and payable respectively in one, two, three, four, and five years from the date thereof, with interest.

A disagreement as to the amount due exists between W. A. Stuart and said Sp'l Com'r Snyder and his co-commissioners. A special report has been filed by the said special com'rs in said cause in said district court as of October 15, 1883, stating as follows:

W. A. Stuart, Dr.

To first three deferred payments on the White Sulphur Springs property, $61,290.00 each, due respectively March 31, 1881, March 31, 1882, & March 31, 1883	$183,870 00
Interest to Oct. 15, 1883	39,072 37
	$222,942 37
Cr. by payments	216,329 72
Bal. as of Oct. 15, 1883	$6,612 65

In an alternative statement the balance due as of Oct. 15, 1883, is reported to be $32.50

Under the requirement to report "all liens," &c., I deemed — my duty to report this matter. It is not within the province of the undersigned to dwell upon the correctness of either of the above statements.

In addition to the balance due from W. A. Stuart, as above, as of Oct. 15, 1883, there is now one other (the 4th) bond for
25 $61,290.00, due since March 31, 1884, and interest. There will be another for $61,290.00 falling due March 31, 1885. This indebtedness of W. A. Stuart, though in another suit in another court, I report, and think I should be expected to, as the 1st lien upon all the real estate of the old White Sulphur Sp'gs Co., with reservations named therein.

Vendor's Lien of W. A. Stuart.

In the deed of W. A. Stuart & wife of 17th March, 1882, to the Greenbrier White Sulphur Springs Company a lien was retained to secure various notes, all of which, as Mr. Stuart's letter to the undersigned and the testimony shows, are unpaid. They are as follows:

One due	1st	day of	September,	1882, for	$23,110 22
"	"	"		1883, "	48,746 61
"	"	"		1884, "	61,249 17
"	"	"		1885, "	33,150 24
"	"	"		1886, "	39,171 42
"	"	"		1887, "	37,968 85
"	"	"		1888, "	36,766 30
"	"	"		1889, "	15,521 15
"	"	"		1890, "	57,540 41
"	"	"		1891, "	13,000 00
"	"	"		1892, "	13,000 00
"	"	"		1893, "	13,000 00
"	"	"		1894, "	13,000 00
"	"	"		1895, "	13,000 00
"	"	"		1896, "	13,000 00
"	"	"		1897, "	13,000 00
"	"	"		1898, "	13,000 00
"	"	"		1899, "	13,000 00
"	"	"		1900, "	213,000 00

26 *Note.*

Only the two first-named bonds are past due. A statement is as follows:

Statement as of June 1, 1884, of W. A. Stuart's Vendor's Lien.

1st bond, due Sept. 1, 1882, for		$23,110 22
Interest		2,426 56
		$25,536 78
2nd bond, due Sept. 1, 1883, for	$48,746 61	
Interest	2,193 57	
		50,940 18
Total		$76,476 96

The residue of the notes or bonds enumerated on next page preceding, while not yet *one*, are also secured by the vendor's lien. These notes aggregate $611,367.54.

EXHIBIT B. L. No. 1. Filed with Depositions.

Note.

The decree of Greenbrier circuit court, W. Va., subrogates the Bank of Lewisburg to the lien above of W. A. Stuart *pro tanto*. So the following would be a statement:

Am't of vendor's lien now due	$76,476 96
Am't decreed Bank of Lewisburg	32,744 50
Bal. coming to W. A. Stuart, together with all the purchase bonds after the 2nd bond	$43,732 46

The Claim of the Bank of Lewisburg, West Va.

The Bank of Lewisburg held three (3) notes made by the Greenbrier White Sulphur Springs Company, each for ($10,000.00) ten thousand dollars, falling due respectively November 3rd, 1882, December 3rd, 1882, and Jan'y 4, 1883, with interest from those dates. There was a stipulation made to secure these notes, and some of the
27 mortgage coupon bonds of the company were deposited with said bank to secure (as collateral) these notes. Mr. W. A. Stuart, in his deposition, refers to this fact. The undersigned has used every endeavor to find such stipulations, both among the papers of the company and has endeavored to learn otherwise the whereabouts and terms of said stipulation, but without success. However, in a chancery suit, brought by the said bank against W. A. Stuart and others who had endorsed said notes, in the Greenbrier circuit court, West Virginia, a decree was entered on the 17th day of April, 1883, upon attachment proceedings, &c., giving to said bank a preferred lien upon the real estate of W. A. Stuart by virtue of attachment, &c., and against the real estate of the Greenbrier White Sulphur Springs Company, as garnishee and debtor of said Stuart, for the amount of said notes and interest, aggregating as of that date ($30,678.84) thirty thousand and six hundred and seventy-eight dollars and eighty-four cents, with interest from April 17, 1883, and costs. The decree provided further that said bank should be substituted to the lien reserved (*pro tanto*) by said Stuart in his deed of sale and conveyance to said Greenbrier White Sulphur Springs Company, heretofore referred to, of 17 March, 1882. A copy of said decree is herewith filed as Exhibit B. L. No. 1.

Principal	$30,678 84
Interest to June 1, '84	2,065 66
Total	$32,744 50

Note.

I apprehend this court will decree this debt to carry interest from June 1, 1884, upon the principal of $32,744.50, and compound it a second time. However, I have made the calculation, and should the court decide otherwise, then the principal would be $30,678.04, with int. from April 17, 1883.

28 *Bonds Secured by the Mortgage of April 6th, 1882.*

By deed dated April 6th, 1882, the Greenbrier White Sulphur Springs Company conveyed to William W. Gordon and Isaac H. Carrington, trustees—

1st. The tract of land, with all the improvements thereon, on the line of the Chesapeake and Ohio railroad, in the county of Greenbrier, in the State of West Virginia, known as the Greenbrier White Sulphur Springs property, containing 7,000 acres.

Exhibit "A." Filed with Bill.

2nd. All the interest of said company in a tract of 2,800 acres on or near the line of said Chesapeake and Ohio railroad in Alleghany county, Virginia.

Both of which tracts belonged to W. A. Stuart and were purchased of him by the Greenbrier White Sulphur Springs Company, and on the 17th day of March, 1882, said Stuart received a deed therefor from A. C. Snyder and others, sp'l com'rs, and by deed dated the same day said Stuart and his wife conveyed it to said company.

But there is expressly reserved from the operation of this deed a lot of two acres of land hereafter to be laid off, which will be bounded on the south by the James river and Kanawha turnpike, and on the east by the road which leads into the grounds from the railroad depot, and is to be laid off with such boundaries, and not to exceed two acres, as will be suitable for the erection of a hotel thereon, and the right to use the water from the White Sulphur spring for drinking purposes shall be attached to the said two acres so long as held by the Greenbrier White Sulphur Springs Company, and said company shall have the right, in its discretion, to rent or sell the said two acres with or without said privilege.

3rd. There was also granted in said deed all the furniture, housefurnishing goods, utensils, apparatus, and other personal property on the 7,000 acres aforesaid, carriages, wagons, and all personal
29 property of every description, excepting only provisions intended for consumption, &c., &c., &c. * * * (see copy of trust deed filed with copy of bill as Exhibit "A"), in trust to secure four hundred (400) bonds of said company, each for five hundred ($500) dollars, aggregating the sum of $200,000.00, and dated April 15, 1882, with the principal payable thirty years after date, or within 15 years, at the option of the company, with interest from date at 6%, payable annually, on the 15 September of each year, the first coupon being for $12.50, payable 15 September, 1882, and the last for $17.50, payable 15 April, 1912, and the intermediate coupons being for $30, and each payable on the 15th of September of each year.

The following parties have laid before me their bonds, respectively, and are proven before me otherwise:

Holders of Bonds.

1. W. A. Stuart. (See deposition of W. A. Stuart.)

97 bonds (mortgage coupon bonds), numbered from 1 to 35 and from 39 to 100, inclusive:

Statement.

Principal		$48,500 00
Coupon due Sept. 15, 1882, $12.50 } " " " 1883, $30.00 }	on each of 97 bonds..	4,122 50
		$52,622 50

Also 10 mortgage coupon bonds, numbered from 301 to 310, inclusive:

Statement.

Principal	$5,000 00	
Coupon due Sept. 15, 1882, $12.50 (on each)	425 00	
" " " 1883, $30.00 (bond)		
		$5,425 00
Total		$58,047 50

With a coupon on each for $30, maturing Sept. 15, 1884.

30 *Bonds Held as Collateral.*

1. Bonds held by Merchants' National Bank of Richmond, Virginia.

Statement.

50 bonds for $500 each, and with—
Coupons for $12.50, due Sept. 15th, 1882,
" " $30, " " 1883:

Principal	$25,000 00
50 coupons for $12.50	625 00
" " " $30.00	1,500 00
Total	$27,125 00

Held as security for a note for $10,000. (See claim and deposition of John Branch.)

2. Bonds held by Thomas Branch & Co.:

(*a*) As collateral for note for $10,000, due Dec. 4, 1882: 30 bonds, 201 to 230	$15,000 00
(*b*) As collateral for note of $10,000, with credit of $487.85, due Jan'y 4, 1883: 30 bonds, numbered from 141 to 170	15,000 00
60 coupons, each for $12.50	750 00
" " " " $30.00	1,500 00
Total	$32,550 00

See calculation of balance due on page — on said notes; also deposition and letter of John Branch, herewith filed.

31 *Other Bonds Held.*

(1.) By the deposition of W. A. Stuart it appears that the firm of C. R. Mason & Co., of Staunton, Va., hold three of the mortgage coupon bonds; but, as they have not proved them, I can only make this brief mention thereof. Should these parties or their assignees

come in with their bonds the following would be a statement as of June 1, 1884:

Statement.

3 bonds, Nos. 36, 37, & 38, each for $500, and coupons:

Principal	$1,500 00
3 coupons for $12.50	37 50
" " " $30.00	90 00
Total	$1,627 50

Just as my report was closing these bonds were laid before me, and I marked them and returned them. I report the amount below.

(2.) The Bank of Lewisburg holds some such bonds, but I have failed to obtain the numbers or amount thereof. As the bank has, by a decree, a better and prior lien to such bonds, I assume these bonds held by them have been or will be surrendered.

These are all the bonds to which my attention has been called as follows:

Summary of Bonds Held and Proven.

Held by W. A. Stuart, totals		$52,622 50
"		5,425 00
Total owned by W. A. Stuart		$58,047 50
Held as collateral:		
(*a*) By Merchants' National Bank of Richmond, Va.	$27,125	
(*b*) By Thomas P. Branch & Co.	32,550	
Total held as collateral ☞	$59,675	$59,675 00
32 And proven in this case, and also held and owned by W. A. Stuart		$117,722 50
Add C. R. Mason & Co.'s (just come in, who own their bonds absolutely)		1,627 50
		$119,450 00

EXHIBIT "T. E." Filed with Depositions.

Note.

As to validity of mortgage bonds.

The undersigned, when in Richmond, on the 28th of May, 1884, to receive proofs of debts, &c., for the purpose of allowing all parties, who had omitted doing so when he was there in March, an opportunity of proving debts in this cause, was called upon by Mr. Tazewell Ellett, who claimed to have some grounds of exceptions to the allowance of some of the mortgage bonds, and desired to know if the undersigned thought it a competent inquiry under the decree

of reference to him of January 8th, 1884. The undersigned stated unhesitatingly it was his clear opinion that the matter of attacking the validity of the mortgage or the bonds or their issuance did not come within the purview of the decree referring the case to him.

My reasons for so determining were:

1st. There was no such scope given to the decree, expressly or impliedly.

2nd. The master took the case as he found it, and no pleadings justified him in travelling so far beyond the decree. This of itself should sustain this view.

3rd. No parties, either by petition or answer, had raised the question. However, the undersigned, desiring no misunderstanding of this matter, requested Mr. Ellett to submit his request in writing, and then he (the master) would determine it, so far as his opinion could go.

Almost at the close of the report a communication was mailed to the undersigned, with the request that it be filed with the
33 report. This is cheerfully done, and the undersigned sees no reason to abate his decision as to the irrelevancy of the point, so far as the case now stands, with no pleadings made up, no parties undertaking the costs and responsibility of such an investigation, and with no notice to any one, &c., &c. I submit the matter to the wiser judgment of this honorable court. The memorandum is filed as "Exhibit T. E."

Debts Claimed as Specially Preferred by W. A. Stuart.

1st. Am't of insurance paid:

Principal		$4,215 47
Interest from Dec'r 1, 1882		379 38
		$4,594 85

2nd. Wages paid. (Deposition of W. A. Stuart.)

Principal	$2,400 00	
Interest Dec'r 1, 1882	216 00	
	$2,616 00	$2,616 00
		$7,210 85

Note.

In his deposition Mr. W. A. Stuart states the circumstances that impelled his advancing his own funds to protect the property of the Springs Company, both in the matter of insurance and as to protecting it from violence and loss. I am of the opinion that even in ordinary cases a court of equity would direct insurance to be paid, and, if paid, would allow it as a preferred debt, and particularly in this case. As to the wages, while ordinarily an unpreferred debt, still being, as in this case, for the preservation of the property, as detailed by Mr. Stuart and his letters filed, I should think this claim should be allowed.

34 *The Claim of James Grant Peterkin.*

By deed made the 22nd day of December, A. D. 1881, the Greenbrier White Sulphur Springs Company conveyed to Russell W. Montague, trustee, a certain tract of land, with the buildings situated thereon, on the waters of Howard's creek, and containing two hundred and sixty-two acres of land, being the same premises that were conveyed to the said company by the said Peterkin by deed dated June 15, 1881, known as (dep. of R. W. Montague) "Beauregard," in trust to secure the following notes:

1st. One for seven thousand two hundred and fourteen and $\frac{29}{100}$ dollars ($7,214.29), dated January 2nd, 1882, and payable in four months from the date thereof, without interest.

2nd. One for fifteen hundred dollars ($1,500), payable in nineteen months from the date thereof, with six per centum per annum.

3rd. One for $1,500, payable in three years and seven months from the date thereof, with six per centum interest.

4th. One for $10,000, payable in ten years and four months from the date whereof, at 6 % interest, which interest on $10,000 shall be payable in regular annual installments after October 15, 1882, at which time the first installment of interest shall be payable, and all of said notes are payable to said Peterkin or order. See original trust deed and notes filed with deposition of Russell W. Montague, trustee.

Note.

The trustee made a sale of the property by virtue of said trust deed.

Statement of Sale Feb'y 19, 1884.

Am't realized from sale of property			$14,100 00
Dr.			
To advertising property twice		$25 00	
Auctioneer's fee		7 50	
35 Clerk's fee		2 50	
Trustees' com'is.:			
5 % on $300.00	15 00		
2 % on $13,800	276 00		
		291 00	
			$326 00
Bal. applicable to trust deed			$13,774 00

Deposition of R. W. Montague. Statement of Bal. Due on Trust Debt.

1st note:

Principal	$7,214 29	
Interest to Feb'y 19, 1884	775 63	
		$7,989 92

2nd note:		
Principal	$1,500 00	
Interest June 15, 1881	241 00	
		1,741 00
3rd note:		
Principal	$1,500 00	
Interest	241 00	
		1,741 00
4th note:		
Principal	$10,000 00	
Interest	756 64	
		$10,756 64
		$22,228 56
Total am't due Feb'y 19, '84		$22,228 56
Cr. by net proceeds sale		13,774 00
Bal. due		$8,454 56
Interest from Feb'y 19, 1884, to June 1, 1884		141 31
Total		$8,595 87

Note.

This balance of $8,595.87, with interest from June 1, 1884, represents the amount reported by me as an unsecured debt against the said company.

See Exhibit R. W. M. No. 1, filed herewith.

36 *Judgments.*

The following judgments have been obtained and proven before me against the White Sulphur Springs Company:

At a Circuit Court held for Greenbrier County on the 1st day of May, 1884.

CHARLES OGLE
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (1.)

For benefit of Geo. M. Palmer.

Decree and mechanic's lien for $4,063.10, with interest thereon from 26th April, 1884, and costs, $32.50.

Exhibit "C. O. No. 1," filed with depositions.

Statement.

Decree	$4,063 10
Interest	23 00
Costs	32 50
Total	$4,118 60

Note.

See copy of decree filed as Exhibit "C. O. No. 1." This mechanic's lien is claimed as a prior lien upon the hotel property, the new hotel and the ground whereon it is situated, and the lien is properly claimed and by me reported further on in this report.

In the Circuit Court of Greenbrier County, West Virginia, held April 19th, 1883. In Assumpsit.

M. Erskine Miller
vs.
Greenbrier White Sulphur Springs Company. } (2.)

Assigned to W. A. Stuart.

Judgment for $706.36, with interest from 17th April, 1883, and costs, $15.90.

Exhibit "M. E. M.," filed with deposition of W. A. Stuart.

37 *Statement.*

Principal	$706 36
Interest	47 39
Costs	15 90
Total	$769 65

See deposition of W. A. Stuart, and also copy of assignment and of judgment proven before me.

In the Greenbrier Circuit Court, in West Virginia, on the 13th Nov'r, 1882.

Perkins & Co.
vs.
Greenbrier White Sulphur Springs Company (as Garnishee). } (3.)

Assigned to Alex. F. Mathews.

Judgment for $243.97, with int. from 23rd Nov'r, 1881, and costs, $17.30.

Exhibit "P. & Co."

Principal	$243 97
Interest	38 45
Costs	17 30
Total	$299 72

Before J. W. Arbuckle, Mayor of Lewisburg, West Virginia, and *ex Officio* a Justice of the Peace, Dec'r 29, 1882.

A. F. Mathews
vs.
Greenbrier White Sulphur Springs Company. } (4.)

Judgment for $250.19, with interest from the 29 Dec'r, 1882, and costs, $2.00.

Exhibit "A. F. M."

Statement.

Principal	$250 19
Interest	20 80
Costs	2 00
Total	$272 99

38 Before J. W. Arbuckle, Mayor of Lewisburg, West Virginia, and *ex Officio* a Justice of Peace of Greenbrier County, W. Va., Feb. 27, '83.

R. B. Wilson
vs.
Greenbrier White Sulphur Springs. } (5.)

Assigned to A. F. Mathews.

Judgment for $105.70, with interest from date, and costs, $2.00.

Exhibit "R. B. W."

Statement.

Principal	$105 70
Interest	7 99
Costs	2 00
Total	$115 69

Before J. W. Arbuckle, Mayor of Lewisburg and *ex Officio* a Justice of the Peace of Greenbrier County, December 29, 1882.

The Camden Consolidated Oil Company
vs.
Greenbrier White Sulphur Springs Company. } (6.)

Assigned to A. F. Mathews.

Judgment for the sum of $60.10, with interest from 29th Dec'r, 1882, and costs, $2.00.

Exhibit "C. C. O. Co."

Statement.

Principal	$60 10
Interest	4 69
Costs	2 00
Total	$66 79

Before J. W. Arbuckle, Mayor of Lewisburg and *ex Officio* a Justice of the Peace of Greenbrier County, W. Va., 29th Dec'r, 1882.

J. Hunter Nickell
vs.
Greenbrier White Sulphur Springs Company. } (7.)

Assigned to Alex. F. Mathews.

Judgment for $153.25, with interest from date, and costs, $2.00.
Exhibit "J. H. N."

39 *Statement.*

Principal	$153 25
Interest	12 93
Costs	2 00
Total	$168 18

Before J. W. Arbuckle, Mayor of Lewisburg, W. Va., and *ex Officio* a Justice of the Peace of Greenbrier County, on the 29th Dec'r, 1882.

John B. Hoge
vs.
Greenbrier White Sulphur Springs Company. } (8.)

Assigned to A. F. Mathews.

Judgment for $139.02, with interest from 29th Dec'r, 1882, and costs, $2.00.
Exhibit "J. B. H."

Statement.

Principal	$139 02
Interest	11 84
Costs	2 00
Total	$152 86

Before J. W. Arbuckle, Mayor of Lewisburg, W. Va., and *ex Officio* a Justice of the Peace of Greenbrier County, W. Va., Jan'y 6, 1883.

E. Levering & Co.
vs.
Greenbrier White Sulphur Springs Company. } (9.)

Assigned to A. F. Mathews.

Judgment for $199.15, with interest from Jan. 6, 1883, and costs, $2.10
Exhibit "E. L. & Co."

Statement.

Principal	$199 15
Interest	16 89
Costs	2 10
Total	$218 14

40 Before J. W. Arbuckle, Mayor of Lewisburg and *ex Officio* a Justice of the Peace of Greenbrier County, W. Va., Dec. 29, 1882.

J. B. PEYTON
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (10.)

½ assigned to W. A. Stuart and ½ assigned to A. F. Mathews.

Judgment for $252.42, with interest from 29 Dec'r, 1882, and costs, $2.00.

Exhibit "J. B. P."

Statement.

Principal	$252 42
Interest	21 37
Costs	2 00
Total	$275 79

Greenbrier Circuit Court, 5th Nov'r, 1883.

JOHN F. HARPER
vs.
GREENBRIER WAITE SULPHUR SPRINGS CO. } (11.)

Judgment for $388.38, with interest from 5th Nov'r, 1883, and costs, $10.90.

See Exhibit "J. F. H."

Statement.

Principal	$388 38
Interest	13 58
Costs	10 90
Total	$412 86

Liens and Priorities on Real Estate (Omitting the 2 Acres).

1st lien on all the property bought by W. A. Stuart of the special com'rs in U. S. district court by deed of March 17, 1882, is the balance due from him to said sp'l com'rs, about which there is a controversy between Mr. Stuart and said special com'rs, he claiming it to be $32.50 as of Oct. 15, 1883, and they that it is $6,612.65.

41 In addition to this, there is also due from him one bond for $61,290.00, with interest from March 31, 1884, and one for $61,290, due March 31, 1885. This lien includes the two acres, of course.

2nd lien upon all the property, exclusive of the 2 acres, but especially upon the hotel buildings and cottages, etc., are the insurance paid thereon by W. A. Stuart and the wages of the hired help,

which, under the peculiar circumstances, being for preservation of the security, were of a character to be preferred, as follows:

Insurance	$4,594 85
Wages	2,616 00
Total	$7,210 85

Deposition of W. A. Stuart.

3rd lien upon the new hotel building is the mechanic's lien of Charles Ogle for Geo. W. Palmer, amounting to $4,118.59.

Exhibit "C. O. No. 1."

4th lien upon all the property bought by the Greenbrier White Sulphur Springs Company, and on which vendor's lien retained and now owned by it, is the decree in favor of Bank of Lewisburg, which amounts, as of June 1, 1884, to $32,744.50. This has preference over the residue of vendor's lien belonging to W. A. Stuart.

Exhibit "B. L." No. 1, with depositions.

5th lien upon all property now owned by said company is the balance of purchase-money from said company thereon and secured in the deed to it of March 17, 1882, excluding reservations therein named, as follows: Balance of purchase-money after payment of 4th lien above due and owing June 1, 1884, $43,732.46, together with all the purchase bonds not yet due, but aggregating in amount $611,367.54.

Exhibit "G. W. S. S. Co."

6th lien upon the property now owned by the said company, with reservations and exceptions in its deed securing them, are the mortgage coupon bonds, proven herein, which up to June 1,

Exhibit "A," filed with the bill.

42 1884, are as follows:

(A) Held by W. A. Stuart (owner)	$58,047 50
(A') Held and owned by C. R. Mason & Co	1,627 50
(B) Held as collateral—	
(1) By Merchants' National Bank of Richmond, Va	$27,125 00
(2) Thos. P. Branch & Co	32,550 00

7th lien upon all the property owned by said company (excepting the 2 acres, &c., &c.) is the judgment in favor of Perkins & Co., assigned to A. F. Mathews, for $299.72.

8th lien upon the same are the judgments of—

A. F. Mathews for	$272 99
Camden Consolidated Oil Co.	66 79
J. Hunter Nickell	168 18
John B. Hoge	152 86
J. B. Peyton (A. F. Mathews owns ½ & W. A. Stuart ½ of this J. B. Peyton judgment)	275 79
Total	$936 61

9th lien is the judgment in favor of E. Levering & Co., assigned to A. F. Mathews, for the sum of $218.14.

10th lien is the judgment in favor of R. B. Wilson for $115.69.

11th lien is j'dgm't of M. E. Miller, assigned to W. A. Stuart, for $769.65.

11½ lien is judg't of John F. Harper for $412.86.

Unsecured Claims.

12th claim, not liens, on all the real property of said company, omitting the reservation of 2 acres, are the unsecured debts, which form the 12th class of claims. They are as follows:

(See pages 69, 70, & 71, or pages 72, 73, & 74, of original report.)

43 *Liens and Priorities (2 Acres) on the Two Acres Excepted from Trust Deed and Deed to G. W. S. S. Co. as to Vendor's Lien.*

1st lien is judgment of Perkins & Co----	Assigned to A. F. Mathews.		$299 72
2nd " " " " A. F. Mathews---			272 99
" " " " " Camden Consol. Oil Co.			66 79
" " " " " J. Hunter Nickell			168 18
" " " " " J. B. Hoge ------			152 86
" " " " " J. B. Peyton	½ to A. F. Mathews, ½ to W. A. Stuart		275 79
3rd " " " " E. Levering & Co.	Assigned to A. F. M.		218 14
4th " " " " R. B. Wilson ----			115 69
5th " " " " M. E. Miller --	Assigned to W. A. Stuart.		769 65
6th " " " " John F. Harper ----------			412 86
			$2,752 65

Note.

The deed of W. A. Stuart to the Greenbrier W. S. S. Co. expressly excepted from the vendor's lien these two acres; the mortgage securing bonds also did the same.

It is true the lien for purchase-money due from Stuart to Special Com'rs A. C. Snyder and others binds these two acres, but there being sufficient to pay it, without molesting the above judgment-lienors, by marshalling the assets, these judgments came in first. The unsecured claims came in next, but not as liens.

44 II.

2nd requirement.

Also what is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of such claims and to whom the same are respectively coming.

Unsecured Creditors.

The following claims have been proved before me, and I allow them:

(1.) James Gordon & Co.:

Open account for $22.19 (twenty-two dollars and nineteen cents), with interest thereon from September 23rd, 1881.

Statement.

Am't of account	$22 19
Interest from Sept. 23, 1881, to June 1, '84	3 58
	$25 77

Proven by deposition of H. N. Gordon, herewith filed.

(2.) Purcell, Ladd & Co.:

Open ac. for $1.068.42 (one thousand and sixty-eight dollars and forty-two cents), with interest thereon from the 1st October, 1882, of which the following is a statement:

Am't of account	$1,068 42
Interest from Oct. 1, 1882, to June 1, 1884	106 82
Total	$1,175 24

Proven by deposition of W. H. White, herewith filed.

(3.) Davenport & Morris:

(*a.*) Note dated June 27th, 1882, and due in four (4) months, with interest from Oct. 30, 1882:

Principal	$2,165 73
Interest from Oct. 30, 1882, to June 1, 1884	205 68
	$2,371 41

45 (*b.*) Open account for $3,472.52, with interest from Sept. 14, 1882.

Statement.

Principal	$3,472 52	
Int. from Sept. 14, 1882, to June 1, 1884	338 55	
		$3,811 07
Total		$6,182 48

Proven by deposition of G. B. Davenport, herewith filed.

(4.) Oscar Cranz:

Open account for $1,073.25, with interest from Sept. 1, 1882:

Principal	$1,073 25
Interest from Sept. 1, 1882, to June 1, 1884	112 63
Total	$1,185 88

See deposition of O. Cranz, Jr.

(5.) Watkins, Cottrell & Co.:

(*a.*) A note for $1,474.45 (fourteen hundred and seventy-four and $\frac{45}{100}$ dollars), with interest from Oct. 30, 1882.

(*b.*) Also an open account for $1,273.01, with interest from May 20, 1882.

Statement.

Amount due on note, principal		$1,474 45
Interest from Oct. 30, 1882, to June 1, 1884		147 42
		$1,621 87
Amount due on open account	$1,273 01	
Interest from May 20, 1882, to June 1, 1884	76 26	
		$1,349 27
Total		$2,971 14

Proven by deposition of A. Salle Watkins.

(6.) George P. Stacey & Co.:

(*a.*) A note for $3,914.14, with interest from July 19, 1882, subject to a credit of $1,957.07, as of Aug. 17, 1882.

(*b.*) Another note for $480.60, with interest from Aug. 1, 1882.

Statement.

46	1st note	$3,914 14	
	Interest from July 19, 1882 to Aug. 17, '82	18 92	
		$3,933 06	
Cr. Aug. 17, 1882, by		1,957 07	
		$1,975 99	
Int. to June 1, 1884		212 32	
			$2,188 31
2nd note, principal		480 60	
Protest fee		1 26	
		$481 86	
Int. to June 1, 1884		53 01	
			$534 87
Total			$2,723 18

Proven by deposition of B. H. Turner.

Geo. P. Stacey (continued):

(*c.*) 3rd note for $3,700 (thirty-seven hundred dollars), with interest from June 23rd, 1882, and protest fees, $1.39.

Statement.

Principal	$3,700 00
Protest fees	1 39
	$3,701 39
Int. from June 23rd, 1882, to June 1, 1884	430 09
(*a.*) Balance due on 3rd note	$4,131 48
(*b.*) " " " 2nd "	534 87
(*c.*) " " " 1st "	2,188 31
Total due George P. Stacey & Co.	$6,854 66

(7.) Jas. Thomas & Son:

Accepted draft and protested for	$368 58
And protest fees	1 16
Principal	$369 74
Int. from Oct. 15, 1882, to June 1, 1882	35 98
	$405 72

47 Proven by filing of acceptance, and also shown to be a valid debt upon the examination of the books of the company made by the undersigned at the White Sulphur Springs during the progress of this report. All accounts or claims allowed by me were either supported by depositions or by admissions of their validity made either by letter or by the books of the company, all of which examined by me.

(8.) Isaac H. Carrington:

An open account for services as attorney for $1,500.00 (fifteen hundred dollars), with interest from May 1, 1883, subject to a credit of $600.

Statement.

Amount of claim	$1,500 00
Cr. by board bill	600 00
	$900 00
Int. from May 1, 1883, to June 1, '84	67 00
Total	$967 00

Proven by books of company and by book-keeper's statement.

(9.) Charles G. Summers & Co.:

Open account for $254.30 (two hundred and fifty-four and $\frac{30}{100}$ dollars), with interest from July 20, 1882, and with a credit of $44.87 as of Aug. 24, 1882.

Statement.

Principal	$254 30
Int. from July 20, 1882, to Aug. 4th, '82	1 30
	$255 60
Cr. Aug. 24, 1882, by	44 87
	$210 73
Int. to June 1, 1884	22 18
Total	$232 91

Proven by books of company and by statement of book-keeper.

48 (10.) Forbes & Mann:

A note for $327.24, with interest from Oct. 1, 1882, and protest fees, $1.16.

Statement.

Principal	$327 24
Protest fees	1 16
	$329 40
Int. to June 1, 1884	32 94
	$362 34

Proven by books of the company.

(11.) Edward Reese:

Open account for $1,058.24, with interest from July 20, 1882.

Statement.

Principal	$1,058 24
Int. to June 1, 1884	117 48
Total	$1,175 72

Proven by books of company, etc.

(12.) F. A Laidley & Co.:

Open account for $1,818.45, with average interest from June 1, 1882.

Statement.

Principal	$1,818 45
Interest	218 20
	$2,036 65

Proven by books of company and depositions, etc., etc.

(13.) "The State" (newspaper).

Open account for advertisements, &c., for $25.00, with interest from May 18, 1882.

Statement.

Principal	$25 00
Interest	6 06
	$31 06

Proven by books of the company, etc.

49 (14.) J. W. Watson & Co.:

Open account for $723.52, with average interest from June 10, 1882.

Statement.

Principal	$723 53
Interest	86 75
	$810 28

Proven by books of the company.

(15.) W. D. Shurtz & Co.:

Open account for $79.26, with interest from Aug. 1, 1882.

Statement.

Principal	$79 26
Interest	8 73
	$87 99

Proven by books of the company.

(16.) S. S. Cottrell & Co.:

Open account.

Principal	$364 82
Interest from May 15, 1882	42 68
	$407 50

Proven by company's books.

(17.) Joseph B. Winter:

Open account for $568.60, with interest from August 1, 1882.

Statement.

Principal	$568 60
Interest	62 54
	$631 14

Proven by the books of the company.

(18.) James C. Smith:

Open account for $881.70, with interest from August 15, 1882.

Statement.

Principal	$881 70
Interest	94 79
	$976 49

Proven by books of the Co.

50 (19.) George Gibson, Jr.:

Two notes (2)—one for $417.20 and protest fees, $1.26, with interest from Oct. 4, 1882; the other note for $417.89 and protest fees, $1.26, with interest from November 4, 1882.

Statement.

1st note:	Principal	$417 20
	Protest fees	1 26
		$418 46
	Int. from Oct. 4, 1882	41 84
		$460 30
2nd note:	Principal	$417 89
	Protest fees	1 26
		$419 15
	Int. to June 1, 1884	39 88
	Total of 2nd note	$459 03
	" " 1st "	460 30
	Total due	$919 33

Proven by letters and books of company.

(20.) Richmond Ice Company:

Open account for ice furnished, for the sum of $936.00, with average interest from August 15, 1882.

Statement.

Principal	$936 00
Interest	99 57
	$1,035 57

Proven by books of the company, &c.

(21.) West, Johnson & Co.:

Open account for $596.64, with interest thereon from Sept. 1, 1882.

Statement.

Principal	$596 64
Interest	62 64
	$659 28

Proven by the books of the company, &c., &c.

51 (22.) H. M. Smith & Co.:

Open account for $70.20, with average interest from June 15, 1882.

Statement.

Principal	$70 20
Interest	8 30
	$78 50

Proven by books of the Co., &c., &c.

(23.) G. W. Anderson & Sons:

Open account for $401.50, with interest from June 15, 1882.

Statement

Principal	$401 50
Interest	47 18
	$448 68

Proven by books of the Co., &c.

(24.) Nelson, Matter & Co.:

An open account for $999.50, with interest from July 1, 1882.

Statement.

Principal	$999 50
Interest	104 95
	$1,104 45

Proven by books of the Co., &c.

(25.) James Clark, assignee of John A. Flack & Bro.:

Open account for $3,008.49, with interest thereon from August 24, 1882.

Statement.

Principal	$3,008 49
Interest	333 95
Total	$3,342 44

Proven by books of Co., &c.

(26.) McDowell & Co.:

Open account for $608.08, with interest from April 1, 1882.

Statement.

	Principal	$608 08
52	Interest	78 96
	Total	$687 04

Proven by books of Co., &c.

(27.) C. Y. Davidson & Co.:

Open account for $288.88, with interest thereon from July 1, 1882.

Statement.

Principal	$288 88
Interest	33 22
Total	$322 10

Proven by the books of company, &c., &c.

(28.) Keene & Haggerty:

Open account for $132.55, with interest from July 1, 1882.

Statement.

Principal	$132 55
Interest	16 96
	$149 51

Proven by books of the Co.

(29.) A. Hoen & Co.:

Open account for $585.40, with interest from April 1, 1882.

Statement.

Principal	$585 40
Interest	76 05
Total	$661 45

Proven by books of the Co.

(30.) A. S. Abell & Co.:

Open accounts, one for $31.28, with interest from May 1, 1882, and the other for $512.11, with interest from July 1, 1882.

Statement.

1st account:	Principal		$31 28	
	Interest		3 89	
				$35 17
53 2nd account:	Principal		$512 11	
	Interest		58 88	
				$570 99
	Total			$606 16

Proven by the books of the company, &c.

(31.) Baltimore United Oil Company:

Open account for $999.20, with interest from the 1st Aug., 1882.

Statement.

Principal	$999 20
Interest	109 91
Total	$1,109 11

Proven by books of the Co.

(32.) Thos. C. Basshor & Co.:

Open account for $47.64, with interest from August 1, 1882.

Statement.

Principal	$47 64
Interest	5 97
Total	$53 61

Proven by books of Co.

(33.) Wm. Knabe & Co.:

Open account for	$518 63
Interest from Jan. 1, 1882	75 17
Total	$593 80

Proven by books of the Co., &c.

(34.) Lord & Packham:

Open account for $72.25; interest from Aug. 1, 1882.

Statement.

Principal	$72 25
Interest	7 94
Total	$80 19

Proven by books of Co.

(35 skipped.)

(36.) James Bates:

Open account for $69.33, with interest from March 4, 1882.

Statement.

54	Principal	$69 33
	Interest	9 35
	Total	$78 68

Proven by books of Co., &c.

(37.) Peter Henderson & Co.:

Open account for $132.14, with interest from Aug. 12, 1882.

Statement.

Principal	$132 14
Interest	14 52
Total	$146 66

Proven by books of Co.

(38.) Wm. R. Johnson:

Open account for $73.39, with interest from Sept. 15, 1882.

Statement.

Principal	$73 39
Interest	7 52
Total	$80 91

Proven by books of Co., &c.

(39.) Taliaferro & Co.:

Open account for $54.30, with interest from April 9, 1884.

Statement.

Principal	$54 30
Interest	46
Total	$54 76

Proven by books of the Co., &c.

(40.) The Woven Wire Mattress Company:

Open account for $80.00, with interest from May 1, 1882.

Statement.

Principal	$80 00
Interest	10 00
Total	$90 00

Proven by books of the Co.

(41.) W. A. Stevens:

Open account for $54.00, with interest from July 8, 1882.

Statement.

Principal	$54 00
Interest	6 12
Total	$60 12

Proven by books of Co.

55 (42.) Ernest W. Bowditch:

Open account for $579.65, with interest from Sept., 1882.

Statement.

Principal	$579 65
Interest	52 17
Total	$631 82

Proven by books of the Co., etc.

(43.) Duparquet & Huat:

Open account for $99.60, with interest from June 29, 1882.

Statement.

Principal	$99 60
Interest	11 48
Total	$111 08

Proven by books of the Co., etc.

(44.) The Hahl Manufacturing Company:

The amount claimed is $425.50, but the books of the company show that there is a credit of $94.25 due thereon, and, giving this credit, the following is the statement:

Principal	$330 75
(From Aug. 1, '82) interest	36 38
Total shown by the books of the company	$367 13

(45.) The Wheeling Register:

An open account for	$7 65
Interest from Jan'y 31, 1882	1 07
Total	$8 72

Proven by the books of the Co., &c.

(46.) The Baltimore American:

An open account for	$17 50
Interest, June 1, 1882	2 10
Total	$19 60

Proven by the books of the Co., &c.

(47.) James T. Williams & Co.:

An open account for	$110 67
Interest from Sept. 1, 1882	11 67
Total	$122 34

Proven by books of Co., &c.

56 (48.) J. D. Ferguson & Jas. L. McLeon:

Open account for fees	$300 00
Int. from Sept. 15, 1882	30 25
	$330 25

Proven by books of the Co. and by a letter of Wm. A. Stuart, for the company.

(49.) The Chesapeake & O. Railroad Company:

An open account for railroad tickets for $120.00, with interest July 21, 1882.

Statement.

Principal	$120 00
Interest	13 50
	$133 50

See deposition of C. Macfarlane herewith filed.

(50.) The Western Union Telegraph Company:

An open account for $82.14, with interest from June 30, 1882, and another account for $312.50, with interest from June 30, 1883.

1st acc't:	Principal	$82 14
	Interest	9 43
		$91 57

2nd acc't:	Principal	312 56	
	Interest	17 28	
		$329 84	$329 84
			$421 42

Proven by books of the Co., and by the deposition of J. R. Parker.

(51.) Miss Sally P. Bass:

An open account and due bill filed for	$22 66
Interest from Oct. 22, 1882	85
Total	$23 51

Due bill and account filed.

57 (52.) Dr. Moorman:

Open account for salary and allowance as physician to the Springs Co.

Statement.

Principal	$250 00
Interest from Sept. 1, 1882, to June 1, '84	11 25
	$261 25

(53 skipped.)

(54.) The claim of the Merchants' National Bank of Richmond, Virginia:

This is a note of the Greenbrier White Sulphur — Company for ($10,000,00) ten thousand dollars, falling due October 2nd, 1882, and carrying interest from that date.

A copy thereof is filed with the deposition of John Branch, which see.

Statement.

Principal	$10,000 00
Interest	996 66
Total	$10,996 66

Note.

The said bank holds as collateral to secure the above-secured note fifty (50) mortgage coupon bonds of said company for five hundred ($500) dollars, and numbered respectively 171 to 200 and 231 to 250, secured by mortgage of 6th April, 1882, authorizing issuance of four hundred bonds, each for $500. All of said bonds are dated April 15, 1882, and are payable in 30 years from date, with interest from date, payable annually, on the 15 of Sept., 1882, and is for $12.50, and the last, for $17.50, payable April 15, 1912; the residue of coupons are for $30.00 each.

(55.) The claims of Thomas Branch & Co.:

These consist of two notes made by the Greenbrier White Sulphur Springs Company, each for $10,000.00 (ten thousand dollars), and falling due respectively December 4th, 1882, and January 4th, 1883, with interest from their respective dates of maturity.

58 See depositions of John Branch and copies of notes filed, said notes being taken by the undersigned from the originals produced before him by the witness John Branch.

Statement.

1st note of Thos. Branch & Co.: Principal			$10,000 00
Interest			893 33
Total			$10,893 33
2nd note: Principal	$10,000 00		
Credit as of Nov., '82	487 85		
	$9,512 15		
Interest to June 1, '84	801 95		
			$10,314 10
Total			$21,207 43

Note.

The 1st note is secured by 30 bonds such as are described on next preceding page (mortgage bonds of the Co., with coupons), numbered from 201 to 230.

The 2nd note is secured by similar bonds, 30 in number, and numbered from 141 to 170.

(56.) Claim of W. J. Johnson & Co.:

This is a note of which the following is a copy, original having been laid before me and the books of the company showing the indebtedness:

$3,039.98. RICHMOND, VA., *May 11th*, 1883.

Four months after date we promise to pay W. J. Johnson & Co. or order, without offset, three thousand and thirty-nine $\frac{98}{100}$ dollars (in renewal), negotiable and payable at the Merchants' National Bank, Richmond, Virginia.

59 (Signed) "THE GREENBRIER WHITE SULPHUR SPRINGS CO.,
By H. M. MATHEWS, *Pres't.*"

Statement.

Principal	$3,039 98
Interest	128 62
Total	$3,168 60

Unsecured debts owned by W. A. Stuart, who has proven before me his ownership thereof by producing original assignments of the same and otherwise.

From the deposition of W. A. Stuart it will be seen that he proved before me the said debts. The books of the company verify the amounts of the respective debts claimed.

Unsecured Debts Owned by W. A. Stuart.

(1.) The claim of Blackmore & Kinsey:

Statement.

Principal	$2,721 95
Interest from Nov'r 20, 1882	259 56
Total	$2,981 51

(2.) The claim of Courtney:

Statement.

Principal	$3,312 69
Interest	303 67
	$3,616 36

(3.) The claim of P. Lydecker:

Statement.

Principal	$1,273 78
Interest on $800.86 from Aug. 25, 1882	84 90
" " 472.92 " Sept. 14, 1882	48 48
Total	$1,407 16

(4.) The claim of Eugene Carrington:

Statement.

Principal	$280 00
Int. Nov'r 23, 1882	25 90
Total	$305 90

60 (5.) The claim of Wilson Palmer:

Statement.

Principal	$709 99
Interest Sept. 23, 1882	72 22
Total	$780 21

(6.) The claim of J. H. Signiago:

Statement.

Principal	$978 00
Interest Sept. 1, 1882	93 69
Total	$1,071 69

(7.) The claim of C. R. Mason & Co.:

This is a debt for $4,681.92, with interest from September 1, 1882.

Statement.

Principal	$4,681 92
Interest	491 62
Total	$5,173 54

(8.) The claim of James Hewees:

Statement.

Principal	$493 30
Interest Sept. 1, 1882	51 80
Total	545 10

(9.) The claim of J. W. Geddes:

This is an account for $609.39, with interest from Sept. 1, 1882.

Statement.

Principal	$609 39
Interest	64 01
Total	$673 40

(10.) C. P. Knight's claim:

This is an account of $89.63, with interest from Sept. 23, 1882.

Statement.

Principal	$89 63
Interest Sept. 23, 1882	9 09
	$98 72

61 (11.) The claim of Courtney & Armstead:

Statement.

Principal	$42 39
Int. Sept. 23, 1882	4 30
Total	$46 69

(12.) The claim of C. P. Stokes & Co.:

Statement.

Principal	$144 23
Interest Sept. 23, 1882	14 76
Total	$158 99

(13.) The claim of Basshor & Co. for $2,444.30, with interest from Dec'r 1, 1882:

Statement.

Principal	$2,444 30
Interest	219 97
Total	$2,664 27

Note.

This balance, $2,444.30, is part of the $4,000 and $4,444.30 notes filed with the deposition of W. A. Stuart, and this $2,444.30, together with the $4,338 note, make the entire balance on the notes given to Basshor & Co.

(14.) A note of the Greenbrier White Sulphur Springs Company, due Dec'r 9, 1881, and endorsed by W. A. Stuart, Lancaster & Co., and G. L. Peyton, and Henry M. Mathews:

Exhibit W. A. S. No. 3. Filed with depositions.
See copy of note filed with this report. Original produced before the master.

Statement.

Principal	$6,550 83
Protest fees	2 45
	$6,553 28
Int. from Dec. 9, 1881	973 44
	$7,526 72

62 (15.) A note of the Greenbrier White Sulphur Springs Company, endorsed by W. A. Stuart, Lancaster & Co., and G. L. Peyton, and Henry M. Mathews, for $5,000.00, due Nov'r 18, 1881, with interest from Nov'r 18, 1881:

See copy of letter from W. Mathews, cashier, &c.

Statement.

Principal	$5,000 00
Interest	759 96
	$5,759 96

See copy of letter of W. Mathews, cashier.

(16.) A note of the Greenbrier White Sulphur Springs Company, endorsed by W. A. Stuart, Lancaster & Co., and George L. Peyton, and Henry M. Mathews, for $5,000.00, and due November 18, 1881, with interest from said last-named date:

See copy of letter of W. Mathews, cashier, &c.

Statement.

Principal	$5,000 00
Interest	759 96
	$5,759 96

(17.) A note of said company for $10,000, due Dec'r 19, 1881, with interest from that date, and endorsed by the same parties as were on the last-named note above.

Statement.

Principal	$10,000 00
Interest	1,518 26
Total	$11,518 26

See letter of W. Mathews, cashier.

(18.) A note of the Greenbrier White Sulphur Springs Company, falling due June 7, 1882, and endorsed by George L. Peyton, Henry M. Mathews, and William A. Stuart, at Valley bank, at Staunton, Va.:

See copy of note filed herewith.

Statement.

Principal	$2,605 00
Interest	153 29
Total	$2,758 29

63 (19.) A note of the Greenbrier White Sulphur Springs Company at the bank at Salem, Virginia, for $2,000.00, and endorsed jointly by Henry M. Mathews, William A. Stuart, and George L. Peyton, and due August 18, 1882:

See copy of note filed and deposition of W. A. Stuart.

Statement.

Principal	$2,000 00
Interest	226 04
	$2,226 04

(20.) A note of said company at said bank at Salem, Virginia, for $4,000.00, and due Oct. 17, 1882, and endorsed as next above described note:

Statement.

Principal	$4,000 00
Interest	389 33
Total	$4,389 33

See copy of note and deposition of W. A. Stuart.

(21.) A balance due on a note of said company to Basshor & Co., and endorsed, as the last-named note, jointly by W. A. Stuart, Geo. L. Peyton, and Henry M. Mathews, for $4,338.00; interest from Sept. 5, 1882:

See note and proof No. 13 next above and deposition of W. A. Stuart.

Statement.

Principal	$4,338 00
Interest	452 19
	$4,790 19

(22.) A note of the said company payable to W. J. Johnson & Co., and endorsed by them, for $1,870.86, with interest thereon from October 15, 1882, and owned by W. A. Stuart:

Statement.

Principal	$1,870 86
Interest	182 42
Total	$2,053 28

Note.

All of the originals and assignments and endorsements were
64 laid before me and copies taken and originals returned to said Stuart. See his deposition and exhibits therewith filed and made part hereof.

(24.) A note of the Greenbrier White Sulphur Springs Company, payable at the National Valley bank, at Staunton, Virginia, and endorsed jointly by Henry M. Mathews, George L. Peyton, and W. A. Stuart, for $5,000, and carrying interest from Sept. 4, 1882:

Upon this note a judgment was had as follows:

In the Circuit Court of Augusta County, Virginia.

National Valley Bank, of Staunton, Plaintiff, *vs.* William A. Stuart and George L. Peyton (sued with Henry M. Mathews), Defendants.	Action of Debt.

Judgment at November term, 1882, in favor of the plaintiff against the defendants for the sum of five thousand ($5,000.00) dollars, with interest at the rate of six per centum per annum from Sept. 4, 1882, till paid; $2.29, costs of protest, and costs of suit, $13.10.

Statement.

Principal	$5,000 00
Int. Sept. 4, 1882	520 85
Costs	65 39
Total June 1, 1884	$5,586 24

See deposition of W. A. Stuart and copy of assignment to him filed therewith. This, being a judgment of another State, is reported as unsecured debt, and so claimed by Mr. Stuart.

65 *Recapitulation of Unsecured Claims, with Interest from Their Dates to June* 1, '84.

James Gordon & Co.	$25 77
Purcell, Ladd & Co.	1,175 24
Davenport & Morris	6,182 48
Oscar Cranz	1,185 88
Watkins, Cottrell & Co.	2,971 14
Geo. P. Stacey & Co.	6,854 66
James Thomas & Son	405 72
Isaac H. Carrington	967 00
Chas. G. Summers & Co.	232 91
Forbes & Mann	362 34
Edward Reese	1,175 72
F. A. Laidley & Co.	2,036 35
"State" newspaper	31 06
J. W. Watson & Co.	810 28
W. D. Shurtz & Co.	87 99
S. S. Cottrell & Co.	407 50
Joseph B. Winter	631 14
James C. Smith	976 49
Geo. Gibson, Jr.	919 33
Richmond Ice Company	1,035 57
West, Johnson & Co.	659 28
H. M. Smith & Co.	78 50
G. W. Anderson & Sons	448 68
Nelson, Matter & Co.	1,104 45
Jas. Clark, assignee of John A. Flack & Bro.	3,342 44
Amount carried forward	$34,108 32

66 *Unsecured Claims Continued.*

Amount brought forward	$34,108 32
McDowell & Co.	687 04
C. Y. Davidson & Co.	322 10
Keene & Haggerty	149 51
A. Hoen & Co.	661 45
A. S. Abell & Co.	606 16
Baltimore United Oil Company	1,109 11
Thos. C. Basshor & Co.	53 61
Wm. Knabe & Co.	593 80
Lord & Peckham	80 19
James Bates	78 68
Peter Henderson & Co	146 66
Wm. R. Johnson	80 91
Taliaferro & Co.	54 76
The Woven Wire Mattress Company	90 00
W. A. Stevens	60 12
Ernest W. Bowditch	631 82
Duparquet and Huat	111 08
The Hahl Manufacturing Co.	367 13
The "Wheeling Register"	8 72
The "Baltimore American"	19 60
James T. Williams & Co.	122 34
J. D. Ferguson and J. L. McLean, att'ys	330 25
The Chesapeake & Ohio Railway Co.	133 50
The Western Union Telegraph Co.	421 42
Miss Sally P. Bass	23 51
Dr. Moorman	261 25
Bal. carried forward	$41,313 04

67 *Unsecured Debts—Continued.*

Balance brought forward	$41,313 04
Blackmore & Kinsey, assigned to W. A. Stuart	2,981 51
Courtney, " " "	3,616 36
P. Lydecker, " " "	1,407 16
Eugene Carrington, " " "	305 90
Wilson Palmer, " " "	780 21
J. H. Signiago, " " "	1,071 69
C. R. Mason & Co., " " "	5,173 54
James Hewees, " " "	545 10
J. W. Geddes, " " "	673 40
C. P. Knight, " " "	98 72
Courtney & Armstead, " " "	46 69
C. P. Stokes & Co., " " "	158 99
Basshor & Co., " " "	2,664 27
A note of G. W. S. S. Co., &c., " " "	7,526 72
" " " " " "	5,759 96
" " " " " "	5,759 96
" " " " " "	11,518 26

A note of G. W. S. S. Co., &c., assigned to W. A. Stuart		$2,758 29
" " " " " "		2,226 04
" " " " " "		4,389 33
" " " " " "		4,790 19
" " " " " "		2,053 28
" " " " " "		5,586 24
W. J. Johnson & Co., balance due		3,168 60
Bal. due on debt to G. Grant Peterkin (trust deed bal.)		8,595 87
Merchants' National Bank of Richmond, Va.	Secured by bonds as collateral.	10,996 66
Thos. Branch & Co.		21,207 43
Total		$144,761 41

68 *Aggregate of All Debts.*

(I.) Secured.

(*a.*) Bal. due from W. A. Stuart on purchase-money due (undetermined), which includes certainly a bond for $61,290, with int. from March 31, 1880, and another falling due March 31, 1885, for like am't and interest.

Other vendors' liens.

(*b.*) Bal. due W. A. Stuart from company, past due		$43,732 46
" Bank of Lewisburg		32,744 50
		$76,476 96

Mortgage Bonds.

Held and owned absolutely by W. A. Stuart	$58,047 50	
" " " by C. R. Mason & Co.	1,627 50	
		$59,675 00
Held as collateral by Thos. Branch & Co., and by Merch'ts' Nat'l Bank, Richmond		$59,675 00

Specially preferred debts: W. A. Stuart.

Judgments.

Chas. Ogle, for Palmer	$4,118 60	
M. E. Miller " W. A. Stuart	769 65	
John T. Harper	412 86	
Various judgm'ts of A. F. Mathews	1,570 16	
		$6,871 27
Total secured		$209,909 08

(II.) Unsecured claims.

Total unsecured	$144,761 41
	$354,670 49

Note.

In addition to the aggregate, $354,679.49, it must be remembered that there is the indebtedness due by W. A. Stuart of $61,290.00, with interest from March 31, 1880, and some small balance undetermined, all of which is past due and will swell the total liabilities against the property that much more.

69

Summary of Unsecured Claims.

Total held by W. A. Stuart	$59,479 81
" " various parties	44,481 64
" " Peterkin	8,595 87
" " all parties (totally unsecured)	$112,557 32

To this must be added the following for which collaterals are held:

(1.) Merch'ts' Nat. B'k of Rich'd	10,996 66	
(2.) Thos. Branch & Co.	21,207 43	
		32,204 09
Grand total		$144,761 41

Note.

Of the $144,761.41 there are $32,204.09 which represent the claims of Merchants' National Bank of Richmond, Va., and Thos. Branch & Co., which are secured by bonds, amounting to $59,675.00.

Deducting this from the total would be	$144,761 41
Deduct the bank and Branch's claims (secured by collateral)	32,204 09
Total totally unsecured claims	$112,557 32

And deducting the actual am't secured by the bonds to Branch & Co. and the bank leaves:

Total bonds held as security by them	$59,675 00	
Actual indebtedness for which security had	32,204 09	
Bal. of bonds to be deducted from the $209,496.22 secured debts	$27,460 91	
	$209,909 08	
	27,460 91	
Real net am't of secured debts	$182,538 17	
Net total secured		$182,538 17
And unsecured		$295,095 49

70 III.

3d requirement.

What property, assets, and estate is held and owned by the said defendant company of every kind?

1st. As to real estate:

By deed dated the 17th day of March, 1882, William A. Stuart and wife conveyed to the Greenbrier White Sulphur Springs Company, for $390,194.44, "a tract or boundary of land, lying in the county of Greenbrier and State of West Virginia, containing about seven thousand (7,000) acres, which was formerly known as the 'White Sulphur Springs property' and belonged to the 'White Sulphur Springs Company;' and also the interest of said Stuart in a tract of 2,800 acres, lying on or near the line of the Chesapeake & Ohio Railroad Company, in Alleghany county, in the State of Virginia, and formerly belonged to one Hoke and afterwards was the property of the said White Sulphur Springs Company; and also all improvements, buildings, and appurtenances on or belonging to the said lands, which said tracts were purchased by the said W. A. Stuart at a sale made by commissioners acting under a decree of the district court of the United States for the district of West Virginia, rendered in the suit in said court, in which said C. S. Gay and others were plaintiffs and the 'White Sulphur Springs Company' and others were defendants, and which said tracts of 7,000 and 2,800 acres were conveyed to the said W. A. Stuart by A. C. Snyder, special com'r of said district court, by deed dated herewith, reference being had to said deed for the metes and bounds of said tracts of land." * * * And it is understood that the same lots are excepted from the operation of this deed as are reserved in the aforesaid deed, viz: (1) The cemetery belonging to the former proprietors, containing about one-fourth (¼) of an acre; (2) the lot upon which is situated
71 the Methodist church, and (3) the lot sold to the Right Rev. George Peterkin for the use of the Episcopal church; but it was *it was* expressly covenanted that the lien reserved for deferred purchase-money should not extend to two (2) acres of land on which it is (was) proposed to erect a hotel near the railroad depot, said two acres to be bounded on the south by the James river and Kanawha turnpike, about opposite to the site of the hotel, which was burnt in 1877, and on the east by the road now leading from the depot into the grounds, and shall be laid off in such shapes as will be convenient for the erection of a hotel.

And it was further covenanted that the Greenbrier White Sulphur Springs Company should have, as attached to said contemplated hotel, the privilege of the use of water from the White Sulphur spring; the privilege for drinking purposes independent of any sale under the lien herein reserved, and shall have the right, if they think proper, to lease or to convey such privilege as attached to the two acres in any lease or conveyance they may hereafter make of the same.

There was also reserved from the operation of said deed and from the lien for purchase-money the right of Richard H. Dulaney to have, occupy, and enjoy as heretofore two cottages erected upon said Springs property at the expense of the said Dulaney.

See copy of deed filed herewith as Exhibit "G. W. S. S. Co."

The foregoing, with the exceptions and reservations aforesaid, represent the real estate of the Greenbrier White Sulphur Springs Co.

2nd. As to the personal property:

There came into the hands of the receiver, A. L. Boulware, Esqr., an almost illimitable amount of personal property, including a large number of horses, cows, and other live stock. An inventory, thorough and complete, was made and Mr. Boulware has filed in this cause said inventory, though I do not know of any appraisement being made or even being necessary.

72 The inventory has been laid before me, but it is too cumbrous to attempt its incorporation into this report.

Mr. Boulware has sold the live stock, and has filed in this cause his proceedings under said sale.

The personal assets consist, therefore, of the proceeds of said sale of stock, and all the furniture, wares of every kind, wines, liquors, and some provisions, groceries, etc., etc., as shown by said receiver's report filed herein. These personal assets are very valuable, but the undersigned has no means to do other than report as above.

IV.

4th requirement.

Any other matter or thing deemed pertinent by me or which any party or person interested shall require to be specially stated.

The undersigned knows of no matter deemed pertinent by him other than he has already reported upon. No one has required any other matter to be specially reported upon which could be properly reported by me.

Mr. Ellett did call my attention to his desire to impeach some of the bonds as to their issuance, but as stated above, I did not consider it pertinent or within the scope of this report or the decree directing it, especially as there were no pleadings to justify it.

See exhibits with depositions in a separate package.

V.

5th requirement.

To settle and audit the account of the transactions of Harrison Phoebus, late lessee of said defendant company, as such lessee.

As will be seen from the notices hereto appended, due notice was given of this requirement of the decree. Accordingly Mr.

73 Thomas Tabb, together with Mr. Phoebus' book-keeper, brought the papers, vouchers, etc., connected with Mr. Phoebus' account to Richmond, Virginia, and laid the same before me, but, by an order entered in this cause and mailed to me, appended

hereto, I was directed not to proceed any further in Richmond with Mr. Phoebus' accounts, and by consent of all parties I adjourned it to the White Sulphur Springs to March 31, 1884. Again Mr. Tabb came with the vouchers and papers aforesaid, but no one representing the company appearing, the account was adjourned and finally to August 4, 1884, at the White Sulphur Springs.

This time and place suited all parties and all of them heartily agreed to it.

There being nothing further to report, this report is closed this 23rd day of June, 1884, and, together with the depositions and exhibits, is respectfully submitted.

D. C. GALLAHER, *Master.*

Costs of Report.

Printer's fee to Kanawha Gazette	$12 50
" " " Richmond Dispatch	16 00
Master's fee, including travelling and hotel expense, two trips to Richmond and two to White Sulphur, marking and filing bonds, exhibits, depositions, telegraphing, &c., &c., &c.	
Total	8

74 U. S. Circuit Court for District of West Virginia.

W. A. STUART and Others
vs.
GREENBRIER WHITE SULPHUR SPRINGS Co. & *als.* } In Equity.

Depositions and Exhibits Filed with Master's Report.

Deposition of H. N. Gordon and others, taken by me in the case of W. A. Stuart and *als. vs.* Greenbrier White Sulphur Springs Company, pending in the U. S. circuit court for dist. of W. Va., to be read with and made part of my report in said cause.

H. N. GORDON, being duly sworn, deposes and says as follows:

1st question by master. Please state your residence and occupation.

I reside in Richmond, Virginia, and am clerk and book-keeper for James Gordon & Co.

2nd by same. Please state what, if anything, you may know of an account of James Gordon & Co. against Greenbrier White Sulphur Springs Company for $22.19 and filed in this cause.

Ans. I am book-keeper and clerk of said claimants and know that the said account is correct, and I file the account as Exhibit "J. G. & Co. No. 1." After giving all credits, the balance due is $22.19.

And further deponent saith not.

(Signed) H. N. GORDON.

75 G. B. DAVENPORT, being duly sworn, deposes and says:

1st question by master. Please state your residence and occupation.

Ans. I reside in Richmond, Virginia; am one of the partners of Davenport & Morris.

2nd by the same. Please state what, if anything, you may know of any indebtedness of Davenport & Morris against the Greenbrier White Sulphur Springs Company filed in this cause.

Ans. I am one of the partners of said firm, which has a claim of $5,638.25, made up of a note for $2,165.73, dated June 27, 1882, and due in four months, and made by said company to said firm, and also of an open account for the balance of $5,638.25, which I file as Exhibit "D. & M. No. 1." The original notes I now present and desire a copy of the same to be made. The balance of $5,638.25 is due as of Sept. 14, 1882, as per account filed.

And further deponent saith not.

(Signed) G. B. DAVENPORT.

Copy of note referred to by G. B. Davenport:

$2,165.73. WHITE SULPHUR SPRINGS, W. VA., *June* 27, 1882.

Four months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of Mess. Davenport & Morris twenty-one hundred and sixty-five $\frac{73}{100}$ dollars, value received; negotiable and payable at Merchants' Nat'l B'k, Richmond, Va., due Oct. 27, 1882.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

76 WILLIAM H. WHITE, being duly sworn, deposes and says:

1st question by master. Please state your residence and occupation.

Ans. I reside in Richmond, Virginia, and am the book-kepeer of Purcell, Ladd & Co.

2nd by same. Please state what, if anything, you may know of an account of Purcell, Ladd & Co. against the Greenbrier White Sulphur Springs Company filed in this cause.

Answer. I am the book-keeper of said claimants, and now file an account of the indebtedness of said firm against said company for $1,068.42, as of October 1, 1882, all of which is due and unpaid, as will be seen by reference to said statement, now filed by me with my deposition as Exhibit "P., L. & Co. No. 1." There are no credits upon said account except those already given thereon, the whole amount now due being $1,068.42, as of October 1, 1882.

And further deponent saith not.

(Signed) WM. H. WHITE.

JOHN P. BRANCH, being duly sworn, deposes and says:

1st question by master. Please state what claim or claims, if any, is or are due, to your knowledge, to Thos. Branch & Co. or to Merchants' Nat'l Bank by the Greenbrier White Sulphur Springs Company, and state what you may know about said claim.

Answer. I am president of the Merchants' National Bank of Richmond, Va. Said company is indebted to it in the sum of ten thousand dollars, evidenced by a note of said company dated April 29, 1882, and due in five months, and signed by H. M. Mathews, president of said company. Said company is also indebted to
77 Thos. Branch & Co., of Richmond, Va., in the sum of $20,000, evidenced by two notes, one dated Aug. 1, 1882, due Dec. 1 & 4, 1882, for $10,000, and one dated Sept. 1, 1882, for $10,000, due 1 & 4 January, 1883, with credit of $487.85 as of Nov. —, 1882.

I now exhibit the first-named note to you.

The other two notes I will either file or present for copies to be taken.

And further deponent saith not.

(Signed) JOHN P. BRANCH.

Depositions of Oscar Cranz, Jr., and others, taken before me, D. C. Gallaher, a master of U. S. circuit court for dist. of W. Va., at Richmond, to be read with and made part of my report in the chancery cause of W. A. Stuart and *als. vs.* Greenbrier White Sulphur Springs Campany and *als.*, pending in said court.

OSCAR CRANZ, Jr., being first duly sworn, deposes and says as follows:

1st question by master. Please state what, if anything, you may know as to an account filed in this cause in favor of Oscar Cranz *vs.* Greenbrier White Sulphur Springs Company for a balance of $1,073.25.

Answer. I have examined said account and know it to be correct. I was book-keeper for the claimant, Oscar Cranz, when said account was made, and said account is entitled to no credit, except the item of $114.25 allowed thereon, leaving the balance due of $1,073.25. I file said account as Exhibit "O. Cranz No. 1."

And further deponent saith not.

(Signed) O. CRANZ, JR.

78 A. SALLE WATKINS, being duly sworn, deposes and says:

1st question by master. Please state what, if anything, you may know of an account filed in this cause by Watkins, Cottrell & Co., *vs.* The White Sulphur Springs Co. for $2,747.46.

Answer. I am one of the partners of the firm of Watkins, Cottrell & Co., and know the account filed, amounting to $1,273.01, as also the note for $1,474.45, is correct and owing. There are no credits, save and except those already placed there, leaving a balance on the account due of $1,273.01 and on the note of $1,474.45. The itemized account is filed as Exhibit "W. C. & Co."

And further deponent saith not.

(Signed) A. SALLE WATKINS.

B. H. TURNER, being by me duly sworn, deposes and says:

1st question by com'r. Please state what, if anything, you may know of three certain notes made to George P. Stacey by Greenbrier White Sulphur Springs Company, one dated March 16, 1882, for $3,914.14, due four months after date, with a credit of $1,957.07, Aug. 17, 1882; another dated June 26, 1882, for $480.60, due in three months, and another for $3,700.00, due in four months and dated Feb'y 20, 1882, and all filed in this cause.

I was at the time said notes were given and am still the bookkeeper of George P. Stacey, the claimant. I know that all of said notes are due and unpaid and the only credit thereon is the one I named in the question. Said notes were given for supplies furnished said company. I file the notes as Exhibits "G. P. S. Nos. 1, 2, & 3," respectively.

And further deponent saith not.

(Signed) B. H. TURNER.

79 J. F. SWETMAN, being duly sworn, deposes and says as follows:

Please state what, if any, bonds or other indebtedness you have or own against the White Sulphur Springs Company.

Answer. I have three $500 bonds with coupons attached, due respectively—No. 8, due January 1, 1861; No. 81, due January 1, 1862, and No. 228, due January 1, 1865. These bonds I laid before Commissioner H. M. Mathews October 19, 1875, to whom a settlement of debts against said company was referred. I have never received a cent from them of either principal or interest. I desire now to present the receipt of said Mathews and to claim all that I am entitled to in law or equity.

And further deponent saith not.

(Signed) J. F. SWETMAN.

Deposition of Russel W. Montague, taken before me this 5th May, 1884, to be read with and made part of my report in case of W. A. Stuart and others against the Greenbrier White Sulphur Springs Company and others.

Present: W. A. Quarrier, for claimant.

RUSSEL W. MONTAGUE, being first duly sworn, deposes and says:

1st question. Please state your age, residence, and occupation.

Answer. I am 32 years old, and I reside at the Greenbrier White Sulphur Springs, W. Va., and am a farmer.

2nd. State whether or not you are trustee in a deed of trust in the Greenbrier White Sulphur Springs Company to James Grant Peterkin, dated 22nd Dec'r, 1881; and, if so, please file the original trust deed with your answer. State also if you made sale under said deed, and whether the sale included a portion or all of said trust estate, and when and where you made the sale. State also what the whole property brought, and how much were the expenses of sale, and what were the net proceeds of the sale, and if you have a

statement or "balance-sheet" please file it. Please also file
80 the original notes secured in said trust deed which were unpaid at the time of the sale, and state also who is the owner and claimant of the balance due on said notes after crediting the proceeds of said sale. State whether or not, so far as you know, any payments have been made upon any of the three notes filed by you other than by said sale.

Answer. I am trustee in the trust deed referred to in the question, and I now file the original deed as "R. W. M. No. 1" and as part of my deposition. I made sale under said deed, and it included the whole of the trust estate, on the 19th of February, 1884, at 12 m., on the premises. The whole property brought ($14,100) fourteen thousand and one hundred dollars. The expenses were $326.00 The net proceeds were $13,774.00; and I now file as part of my deposition a statement thereof as Exhibit "R. W. M. No. 2." I now file three unpaid notes secured in said trust deed, marked respectively as Exhibits "R. W. M. Nos. 3, 4, & 5;" one thereof is due nineteen months after date, for $1,500; one other for $1,500, due three years and seven months after date; one other for $10,000, due ten years and four months after date, and all dated June 15, 1881, as will be seen by endorsement thereon. Said notes have been endorsed to George Grant. No payments have been made upon any of said notes except by the net proceeds of said sale, and the residue is unpaid.

And further deponent saith not.

(Signed) RUSSELL W. MONTAGUE.

81 Deposition of W. A. Stuart, taken before me this 13th day of May, 1884, during the making of my report, in the suit of W. A. Stuart *vs.* Greenbrier White Sulphur Springs Co. and others, pending in the circuit court of the United *Stated* States for the district of West Virginia.

1st question by master. Please state whether you are the complainant in this cause or not.

Ans. I am.

2nd by same. Now, please state what claims, if any, you have or own against the defendant, The Greenbrier White Sulphur Springs Company, and please produce the papers relating thereto; also state any liens or other debts you may own against the property in controversy.

Ans. I own, and now produce to be identified, ninety-seven 1st-mortgage bonds, dated April 15th, 1882, and due April 15th, 1912, numbered from 1 to 35 and from 39 to 100, inclusive, secured by the mortgage upon the property of said company bearing date April 15, 1882. As will be seen, each bond is $500.00 and with coupons of interest, the 1st falling due Sept. 15, 1882, and for $15, and the residue falling due on the same day in each year following until and inclusive of 1912, all but the first being for $30 each. These bonds, together with similar bonds, numbered 36, 37, and 38, were given me for an equal amount of indebtedness assumed and paid off by me pursuant to a stipulation or memorandum here shown

you, bearing date April 5, 1884, and signed by Henry M. Mathews, late president of said company. I desire a copy to be made of said memorandum and filed with my deposition as Exhibit "W. A. S. No. 1." The three bonds, Nos. 36, 37, and 38, I negotiated with C. R. Mason & Co., and took an assignment of their claim against said company for said bonds and other valuable consideration.

I also own and now produce ten other bonds of like description, amount, and coupons, numbered respectively from 301 to 310,
82 inclusive. Said bonds were taken by me on account of and in full of a debt assumed and paid by me, which was a note in words and figures following:

"$5,000. WHITE SULPHUR SPRINGS, W. VA., *Nov.* 18, 1881.

Four months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of George L. Peyton five thousand dollars, value received, negotiable and payable at the Bank of Lewisburg, W. Va.

(Signed) GREENBRIER WHITE SULPHUR SPRINGS CO.,
Per W. A. STUART, *President*."

and by said Peyton endorsed to me. I now exhibit the original note paid by me and for which said bonds were taken by me. (All of said bonds referred to by the witness, as well as the original note and the original agreement or memorandum of April 5, 1884, were examined, marked, and identified by me and a copy of the latter is filed herewith as Exhibit W. A. S. No. 1.)

I also claim the following debts against said company, and I claim for them priority over all other indebtedness—that is to say, I claim that the judgments in favor of J. B. Peyton and of M. Erskine Miller for W. J. Johnson, being liens against the real estate, bind also the two acres excepted from the coupon bonds secured by the mortgage referred to. The residue were debts created for the preservation of the property, except the mechanic's lien of Charles Ogle for G. W. Palmer, which by statute has priority.

The items claimed by me as preferred debts are—Nov'r 13, 1882, am't paid Alderson, insurance agent, $4,215.47. A part of the above debt has not been paid yet, but has been secured by my own endorsement. It, I think, should be paid out of the running of the property this year. I paid the insurance under circumstances that impelled immediate action. Up to Dec'r 1, 1882, the insurance policies had earned $753.15, and it was understood that Mr. Phoebus
83 would pay what from that time forward would be earned by the policies for that year, which was ascertained to be $3,348.20. The interest upon the $753.15 at the time I paid it was $36.00, and upon the $3,348.20 it was $78.12, and I claim interest from Dec'r 1, 1882, upon the amount, $4,215.47. I paid the $753.15 and interest myself, and have endorsed the company's paper for the residue of the amount. About the time of this insurance transaction there was trouble among the employees. The company had failed and there were threats of violence; so much so that the

parties interested were apprehensive of the safety of the buildings, and the insurance agent notified me plainly that unless the insurance was promptly paid he would at once cancel the policies. About this time I received information of the trouble there, and now file a telegram from H. M. Mathews, or rather ask you to incorporate it in my deposition. It is as follows:

"GREENBRIER W. S. SPRINGS, *Nov'r* 30, 1882.

"W. A. Stuart, Saltville, Va.:

"Letter rec'd. It will take twenty-four hundred dollars to pay help here. They will not leave until paid and will give trouble. All very anxious to put Phoebus in possession. Answer at once. Important.

"(Signed) HENRY M. MATHEWS."

(The above is a true copy.

D. C. GALLAHER, *Master.*)

I desire you also to copy the following from a letter now shown you from Henry M. Mathews:

"I don't think that Phoebus will take possession until we get rid of the help here, and they will not leave until they are paid. I wish very much you could be here a day or two and realize the state of affairs."

(The above is a true extract from a letter of Nov'r 28, 1882, written by H. M. Mathews to the witness W. A. Stuart. Said letter was written from the White Sulphur Springs, W. Va., and the writing is identified by me as that of the late Henry M. Mathews.

D. C. GALLAHER, *Master.*)

I now produce a note paid by me for the insurance above named:

"$789.15. WHEELING, W. VA., *Nov'r* 13, 1882.

84 "Four months after date the Greenbrier White Sulphur Springs Company promises to pay W. A. Stuart seven hundred and eighty-nine $\frac{15}{100}$ dollars, value received, negotiable and payable at the Exchange Bank of Wheeling.

"THE GREENBRIER WHITE SULPHUR SPRINGS CO.,

"By HENRY M. MATHEWS, *Pres't.*"

(The above is a true copy.

D. C. GALLAHER, *Master.*)

The following are the other debts claimed by me as preferred: Charles Ogle, for G. W. Palmer, mechanic's lien on new hotel at White Sulphur, as of M'ch 12th, 1883, $2,588.52.

You will please report this debt for Mr. Palmer, and I now produce a copy of the original assignment:

"In the County Court of Greenbrier Co., West Virginia.

CHARLES OGLE)
vs.)
GREENBRIER WHITE SULPHUR SPRINGS CO.)

Lien on the New Hotel at White Sulphur Springs.

Mr. CLERK: The mechanic's lien, as above entitled, is hereby assigned to George W. Palmer, and you will enter the same to his use.

CHARLES OGLE.

Witness:
ALBERT RITCHIE."

I also produce the original assignment of the M. E. Miller claim. It is as follows:

For value received I hereby assign to W. A. Stuart a judgment recovered by me in the circuit court of Greenbrier county, West Va., for six hundred and eighty-two $\frac{49}{100}$ —, with interest from date, Sept. 11, 1882. The said assignment is made without recourse upon me in any way whatsoever.

Given under my hand this July 5, 1883.

(Signed) M. ERSKINE MILLER.

Exhibit M. E. M.

(The above is a true copy.

D. C. GALLAHER, *Master.*)

85 The J. B. Peyton judgment is also a preferred debt upon the two acres excepted from the mortgage referred to.

I file an assignment of half of it to me; the other half belongs to A. F. Mathews:

"HUNTINGTON, *Dec'r* 29, 1882.

"This is to certify that the Greenbrier White Sulphur Springs Company, of this State, owe me a balance of two hundred and fifty dollars ($250) for services rendered said company as room clerk for the season of 1882; and I hereby assign to Col. Wm. A. Stuart, of Saltville, Virginia, one-half of said amount due me by said company, viz., one hundred and twenty-five dollars ($125.00), Col. Stuart having paid to me by his personal check the said amount of one hundred and twenty-five dollars ($125) hereby assigned.

"Witness my hand this date, 29th Dec'r, 1882.

(Signed) J. B. PEYTON."

In reply to the telegram calling for $2,400 to pay the help at the White Sulphur, I paid it and telegraphed the bank at Lewisburg, W. Va., to pay the $2,400. It was done, and the $2,400 placed to my credit, and with it the debts were paid to the help at the Springs.

These are all the debts claimed as preferred.

I also claim the following debts, being jointly bound with others:

A note of said company, endorsed jointly by Stuart, Lancaster & Co. and Peyton & Mathews, for $6,550.83, due Dec'r 9, 1881.

(See note herewith presented.)

Company's note, endorsed as above, due Nov. 18, 1881, $5,000.00.
" " " " " " Nov. —, " $5,000.00.
" " " " " " Dec. 19, 1881, $10,000.00.

(See copy of letter of cashier, W. Mathews.)

Company's note—curtailment and discount on note endorsed by Peyton, Stewart & Mathews, at Valley bank, Staunton, Va., $2,605.00, due June 7, 1882.

86 Company's note at Salem bank, endorsed jointly by Mathews, Stuart, and Peyton, for $4,000.00.

See note, copy filed, for $4,000—note.

A company's note, August 18, 1882, at Salem bank, endorsed jointly by Stuart, Mathews, & Peyton, for $2,000.00, due Sept. 5, 1882.

Balance due on Basshor & Co. note, endorsed as above, $4,338.00.

Another note of the company for $5,000, endorsed as above, and due Sept. 1, 1882, and payable at Valley bank, at Staunton, Va. This has been put into a judgment *vs.* Peyton.

A note of the company to W. J. Johnson & Co., endorsed by them and owned by me, for $1,870.86. (See copy of this note.)

A note payable at Augusta national bank, at Staunton, Va., for $2,000, and endorsed by Peyton, Stuart, and Mathews. (See copy of this note.)

There are three notes of $10,000 each, due respectively Nov'r 3 and Dec. 3, 1882, and Jan'y -, 1883, made by the company and endorsed by Mathews, Stuart, and Peyton.

All of the above notes except the three last are the property of W. A. Stuart, who looks to his co-endorsers as well as the Springs Company. The three last are held by the Bank of Lewisburg. A deposit of the company's coupon bonds was made by the president of the company with Alex'r F. Mathews to secure the above three notes of $10,000 each, or the endorsers thereon. The deposit was also to secure George L. Peyton & Co. any amount due them, and possibly for other purposes.

The debt of George L. Peyton above referred to was for furniture at the White Sulphur Springs. The Greenbrier White Sulphur Springs owe a balance on this debt for furniture, but whether to George L. Peyton & Co. or to J. N. Camden, George L. Peyton, and deponent individually cannot be certainly stated until a suit

87 now pending in the circuit court of Augusta county, Va., brought to settle that question, is decided. This liability will reach fifteen thousand dollars, and probably more. I file herewith a list of indebtedness made out by the clerk, Mr. Woods, of the Greenbrier White Sulphur Springs Company, who, as book-keeper of said company, made out from the books said lists. Please copy and file copies herewith.

I also claim the following list of indebtedness, all of which have been assigned to me, and I now produce the assignments and ask

you to make a note thereof. I claim these should be paid next after the payment of preferred debts, the mortgage coupon bonds, and those on which I am endorser for the company:

Nov. 4, 1882.	Am't paid Courtney		$3,312 69
" 20, "	Blackmore & Kinsey		2,721 95
" 23, "	Philip Lydecker		1,273 78
" " "	Eugene Carrington		280 00
Jan. 1, 1883.	Wilson, Palmer & Co.		707 99
" " "	J. H. Signiago debt, int. from Sept. 1, 1882		978 00
" " "	Mason & Co.,	" " "	4,681 92
" " "	James Hewees,	" " "	493 30
" " "	J. W. Geddes		609 39
	C. P. Knight		89 63
	—— & Armstead		42 39
	C. P. Stokes & Co.		144 23
	Basshor & Co.		2,444 00

And further deponent saith not.

(Signed) W. A. STUART.

88 $4,000. WHITE SULPHUR SPRINGS, W. VA., *Sep.* 5, 1882.

Twelve months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of W. A. Stuart, Geo L. Peyton, and H. M. Mathews four thousand dollars, value received, negotiable and payable at office of T. C. Basshor & Co., Baltimore.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *Pres't.*

Protested Sept. 8, 1883.
Fees, $2.39.

Endorsed: W. A. Stuart, Geo. L. Peyton, H. M. Mathews, Thos. C. Basshor & Co.

$4,444.30. WHITE SULPHUR SPRINGS, W. VA., *Sept.* 5, 1882.

Twelve months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of W. A. Stuart, G. L. Peyton, & H. M. Mathews four thousand and forty-four $\frac{30}{100}$ dollars, value received, negotiable and payable at the office of T. C. Basshor & Co., Baltimore.

GREENBRIER WHITE SULPHUR SPRINGS CO.,
Per HENRY M. MATHEWS, *Pres't.*

Protested 8th Sept., 1883.
Protest fees, $2.39.

Endorsed by W. A. Stuart, Geo. L. Peyton, H. M. Mathews, & Thos. C. Basshor & Co.

$2,000. WHITE SULPHUR SPRINGS, W. VA., *Sep.* 16, 1882.

Sixty days after date the Greenbrier White Sulphur Springs Company promises to pay to the order of W. A. Stuart, G. L. Peyton, & H. M. Mathews two thousand dollars, value received, negotiable and payable at Augusta national bank, Staunton Va.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

89 Endorsed: W. A. Stuart, Geo. L. Peyton, Henry M. Mathews.
Paid by W. A. Stuart Dec'r 13th, 1882. W. P. Jones, cash'r.

A true copy.

D. C. GALLAHER, *Master.*

"EXHIBIT W. A. S. No. 1.

Memorandum.

On the 28th day of April, 1882, I, as president of the Greenbrier White Sulphur Springs Company, turned over to W. A. Stuart fifty thousand dollars of coupon bonds of the said springs company, dated April 15, 1882, and due April 15th, 1912, numbered from 1 to 100, inclusive, secured by a mortgage on the real and personal property of said company, executed to pay off the floating debts of the Co., with the understanding that said Stuart should take up and turn over to me an equal amount of the debts of the said Greenbrier White Sulphur Springs Company, styled "floating debts." The said Stuart soon after, and repeatedly since, offered to turn over these debts, but lack of time and other circumstances have delayed the transfer until now. Some of the debts to be turned in were then running in book and could not be immediately turned in.

List of Debts.

1882.		
Apr. 6.	W. A. Stuart for his check for springs Co.	$1,944 00
May 8.	People's savings bank, Lynchburg, Va.	2,480 75
" "	National Exchange bank, Lynchburg, Va., note	4,000 00
June 24.	Knoxville bank, Tenn., note	5,500 00
" 27.	Bank of Lewisburg, note	5,000 00
June 27.	Nat. Exchange bank, Lynchburg, note	5,000 00
90 July 11.	Nat. Bank of Virginia, note	2,000 00
" "	Check sent H. M. Mathews, pres't, &c.	2,000 00
July 13.	Merchants' bank, Richmond, Va., note	5,000 00
" 28.	Bank of Knoxville, Tenn., note	4,000 00
Aug. 7.	Geo. W. Palmer, note	5,500 00
" 9.	Bank of Abingdon	
Sept. 10.	Sent Basshor & Co. on old debt	2,000 00
" 9.	Paid Bank of Lewisburg on old debt, bal.	5,000 00
		$51,424 75

CR.

By 100 coupon bonds	$50,000 00	
" average interest	890 00	
Bal. due W. A. Stuart	534 75	
		$51,424 75

Bal. due W. A. Stuart, $534.75.

The facts stated above accord substantially with my recollection, and I believe the foregoing list is correct. The vouchers therein named were handed me this day, but as I have ceased to be the pres't of the G. W. S. Sp'gs Co. I decline to receive them and leave them with Mr. Stuart, vice-pres't of said Co.

(Signed) HENRY M. MATHEWS.

April 5, '84.

A true copy of original presented to me by the witness, W. A. Stuart.

D. C. GALLAHER, *Master, &c.*

$4,000.00. WHITE SULPHUR SPRINGS, W. VA., *Sept.* 5, '82.

Twelve months after date we promise to pay to the order of H. M. Mathews, Geo. L. Peyton, and W. A. Stuart four thousand dollars, at the office of T. C. Basshor & Co., in Baltimore, Md., for value received.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *Pres't.*

Protested May 3, 1882.
Endorsed by W. A. Stuart.

91 EXHIBIT W. A. S. No. 3.

$6,550.83. WHITE SULPHUR SPRINGS, W. Va., *Aug.* 9, 1881.

Four months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of Wm. A. Stuart, R. A. Lancaster & Co., Geo. L. Peyton, H. M. Mathews sixty-five hundred and fifty $\frac{83}{100}$ dollars, value received, negotiable and payable at office T. C. Basshor & Co., Baltimore.

GREENBRIER WHITE SULPHUR SPRINGS CO.,
Per W. A. STUART, *Pres't.*

Endorsed: Pay to T. C. Basshor & Co. or order. W. A. Stuart, R. A. Lancaster & Co., Geo. L. Peyton, Henry M. Mathews, Thos. C. Basshor & Co.

Protest fees, $2.45, at request of National Union Bank of Baltimore, Md.

$4,235.00. GREENBRIER WHITE SULPHUR SPRINGS, WEST VA., *Dec'r* 31, 1881.

Five months after date we promise to pay to the order of W. A. (Stuart), H. M. Mathews, and Geo. L. Peyton forty-two hundred and thirty-five dollars, at the office of T. C. Basshor & Co., in Baltimore, Md., for value received.

THE GREENBRIER WHITE SULPHUR SPRINGS CO.,
By HENRY M. MATHEWS, *President.*

Protested June 3, 1882.
Fees, $—.

$1,870.86. WHITE SULPHUR SPRINGS, W. VA., *Sept.* 12, 1882.

Thirty days after date the Greenbrier White Sulphur Springs Company promises to pay to the order of Mess. W. J. Johnson & Co. eighteen hundred and seventy $\frac{86}{100}$ dollars, valued received, negotiable and payable at Bank of Lewisburg.
Due Oct. 12–15.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

92 Endorsed: Pay to the order of W. A. Stuart. W. J. Johnson & Co., per J. H. Southall, att'y. Pay J. W. Mathews, Esqr., cashier, or order, for collection. W. A. Stuart.

Protested Oct. 15, 1882.
Costs, $1.19.

A copy.

A List of Debts Against Greenbrier White Sulphur Springs Company on which W. A. Stuart is Bound or Claimed to be Bound Jointly with Others.

When due.			
1881.			
Dec.	9.	Company's note endorsed jointy by Stuart, Lancaster & Co., & Peyton & Mathews	$6,550 83
Nov.	18.	Company's note endorsed as above	5,000 00
"	18.	" " " "	5,000 00
Dec.	19.	" " " "	10,000 00
1882.			
June	7.	" curtailment & disc't on note endorsed Peyton, Stuart, & Mathews, at Valley b'k, Staunton, Va.	2,605 00
Aug.	18.	Company's note, Salem, Va. (endorsed jointly by Peyton)	2,000 00
Oct.	17.	Company's note, Salem, Va. (Stuart and Mathews)	4,000 00
Sept.	5.	Bal. on Basshor's note endorsed as above	4,338 00
"	1.	Company's note paid Valley bank endorsed as above	5,000 00

Oct.	15.	Company's note to W. J. Johnson & Co. endorsed by them and owned by W. A. S.	1,870 86
"	15–18.	Company' note endorsed by Peyton, Mathews, & Stuart	2,000 00
Nov'r	3.	Company's note endorsed by Peyton, Mathews, & Stuart	10,000 00
Dec'r	3.	Company's note endorsed by Peyton, Mathews, & Stuart	10,000 00
1883.			
Jan'y	4.	Company's note endorsed by Peyton, Mathews, & Stuart	10,000 00

All of the above notes, except the three last named, are the property of W. A. Stuart, who looks to his co-endorsers, as well
93 as the springs company. The three last are held by the Bank of Lewisburg. A deposit of the company's coupon bonds was made by the pres't of the Co. with Alex. F. Mathews to secure the above three notes of $10,000 or the endorsers thereon. The deposit was also to secure Geo. L. Peyton & Co. any amount due them and possibly for other purposes. The debt of Geo. L. Peyton & Co. above referred to was for furniture at the White Sulphur Springs. The Greenbrier White Sulphur Springs Company owe a balance on this debt for furniture, but whether to Geo. L. Peyton & Co. or to J. N. Camden, G. L. Peyton, and deponent individually cannot certainly be stated until a suit now pending in the circuit court of Augusta county, Virginia, brought to settle that question, is decided.

This liability will reach certainly fifteen thousand dollars, and probably more.

$4,000. WHITE SULPHUR SPRINGS, W. VA., *Sept.* 14, 1882.

Thirty days after date the Greenbrier White Sulphur Springs Company promises to pay to the order of W. A. Stuart, Geo. L. Peyton, & H. M. Mathews four thousand dollars, value received, negotiable and payable at the Bank of Lewisburg, Lewisburg, W. Va.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

Protested for non-paym't Oct. 19, 1882.
Costs, $1.65.

Endorsed: Pay J. W. Mathews, cash'r, or order for collection and credit National Valley bank, Staunton, Va. Thos. A. Bledsoe, cash'r. W. A. Stuart, Geo. L. Peyton, Henry M. Mathews. Pay J. W. Ivey, Esqr., cashier, or order for collection and credit the Farmers' National Bank of Salem, Salem, Va. James Chal-
94 mers, cashier. Pay to the order of T. A. Bledsoe, cash'r, for collection for account of the People's National Bank of Lynchburg, Va. J. W. Ivey, cashier.

A true copy.

D. C. GALLAHER, *Master, &c.*

Copy of Letter Referred to in Deposition of W. A. Stuart.

Greenbrier White Sulphur Springs Co.; Geo. L. Peyton, managing director; B. F. Eakle, chief clerk.

WHITE SULPHUR SPRINGS,
GREENBRIER CO., WEST VA., *Oct.* 17, 1882.

W. A. Stuart, Esqr.

MY DEAR SIR: The enclosed notices will show that the "court" (*sic*) has taken the property in charge. Since I received these notices I wired the "judge" (*sic*) for authority to borrow enough money just to pay off our hands, who are very much discontented on account of not getting their money. I deem this course a wise one for all parties concerned in the Springs property, and especially you. The judge has wired Alex. F. Mathews to advance an am't not exceeding five thousand dollars for that purpose, which Mr. M. is willing to do, provided you and myself endorse the note. What say you?

Hastily and truly, GEO. L. PEYTON.

I write very hastily for this mail, as the matter in question is an urgent and important one.

As I have not time to copy the notices, you will please return them when you write. We need for the hands, say ($5,000) five thousand dollars.

A true copy.

D. C. GALLAHER, *Master.*

95 $3,039.98. RICHMOND, VA., *May* 15, 1883.

Four months after date we promise to pay W. J. Johnson & Co. or order, without offset, three thousand and thirty-nine $\frac{98}{100}$ dollars (in renewal) negotiable and payable at Merchants' National Bank, Richmond, Va.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

A true copy of original produced before me.

D. C. GALLAHER, *Master.*

A. C. Snyder, president. J. W. Mathews, cashier.

Bank of Lewisburg.

LEWISBURG, W. VA., *Aug.* 22, 1883.

W. A. Stuart, Esqr.

DEAR SIR: In reply to your request of 21st inst., the following is the history of the notes on which you and others were endorsers, and which were discounted by the Bank of Lewisburg, viz: On July 19, '81, we discounted for the G. W. S. S. Co. two notes of $5,000.00 each, both due 15–18 Nov., 1881, one endorsed H. M. Mathews, R. A. Lancaster & Co., W. A. Stuart; the other, G. L. Peyton, W. A. Stuart, R. A. Lancaster & Co. Aug. 17, '81, we discounted for same a note for $10,000, endorsed by W. A. Stuart, R. A. Lancaster & Co., Geo. L.

Peyton, and H. M. Mathews jointly, this note maturing Dec. 19, '81. The three notes were protested at their respective maturities, and were settled Jan'y 12, '82, by W. A. Stuart, G. L. Peyton, & M. H. Mathews, they giving their two joint notes for $10,000 and of $11,000, due April 30, 1882, and the bank holding the protested notes as collateral. They remained unpaid until Sept. 26, 1882, when they were settled by the notes of the company, endorsed jointly by W. A. Stuart, G. L. Peyton, & H. M. Mathews—$5,000, due 1–4 Oct.,
96 paid at maturity by W. A. Stuart; $5,000, due 1–3 Nov'r, paid by W. A. Stuart Nov. 23; $6,000, due Dec'r 4, paid by W. A. Stuart January 11, '83. The other $10,000 was, I believe, settled by W. A. Stuart.

On Jan'y 11th, '82, we accepted on account of the overdraft of the Co. six notes of $5,000 each, endorsed jointly by W. A. Stuart, G. L. Peyton, & H. M. Mathews, all maturing 1 May. All of these remained unpaid until Sept. 27, when they were renewed by three notes of $10,000 each, with the same endorsement, maturing respectively 3 Nov'r, 1–3 Dec'r, '82; 1–4 Jan'y, '83. These were protested at maturity, and some time in January, I think, G. L. Peyton notified the writer that he wished suit brought upon them or he would no longer be bound; that if a written notice was *notice was* necessary, he would give it. No notice was served, but we acted on the verbal notice, and the result of the suit you know.

I have given you above a hurried history of the notes, as you requested. If anything further is necessary, let me know.

Yours truly, J. W. MATHEWS, *Cashier.*

A true copy of original produced before me.

D. C. GALLAHER, *Master.*

VIRGINIA, *Augusta County,* } *sct:*

In the Circuit Court of Augusta County, Nov. Term, 1882.

NATIONAL VALLEY BANK OF STAUNTON, Plaintiffs, *vs.* WM. A. STUART & GEO. L. PEYTON (sued with H. M. MATHEWS), Defendants.	Action of Debt.

Judgment at said term in favor of plaintiff against the defendants for the sum of five thousand dollars, $5,000.00, with interest at the rate of six per centum per annum from the 4th day of Sept., 1882, till paid; $2.29 charges of protests, and costs of suit,
97 $13.10.

An extract.

Teste: J. W. RYAN, *Clerk.*

Endorsed: Principal	$5,000	
Cr. Sept. 4, 1882	995	43
	$4,004	57
Int. from Sept. 4, '82, to Jan., 1883	78	09
Costs, protest	2	29
" suit	13	10
Attorney's fee	50	00
	$4,148	05

For value received I hereby assign the within judgment to ——, without recourse on National Valley Bank of Staunton, Va., and myself.

Jan'y 13, '83.

THOS. A. BLEDSOE,
Cashier National Valley Bank of Staunton, Va.

Teste: J. RYAN.

A true copy.

D. C. GALLAHER, *Master.*

98 Deposition of C. W. Macfarlane and others, taken before me in Richmond, Virginia, on the 28 May, 1884, to be read with and made part of my report in suit of W. A. Stuart and others *vs.* Greenbrier White Sulphur Springs Co., pending the United States circuit court for dist. of W. Va.

1st ques. by com'r. Please state what, if anything, you may know of a claim of the Chesapeake & Ohio Railway Co. *vs.* The Greenbrier White Sulphur Springs Co. for six 1,000-mile tickets.

Answer. I am and was July 21, 1882, a clerk in the passenger department of said railway company. I now present the original telegram, which I ask you to copy:

WHITE SULPHUR SPRINGS, W. VA., *July* 21, 1882.

To H. W. Fuller, G. P. A.:

Send us six one-thousand-mile tickets. Check *my* mail.

G. L. PEYTON.

In answer to this we sent six one-thousand-mile tickets, numbers 507, 508, 509, 510, 511, and 512. They have never been paid for, and the debt, $120.00, for said tickets is still due and unpaid.

And further this deponent saith not.

(Signed) C. W. MACFARLANE.

Deposition of J. R. PARKER, who, being sworn, deposes and says as follows:

1st ques. by com'r. Please state what, if anything, you know of a claim of The Western Union Telegraph Company *versus* The Greenbrier White Sulphur Springs Company for the sum of $82.14 and of

$312.56, the former for year 1882—*i. e.*, year ending June 30th, 1882, and the latter ending June 30th, 1883.

Answer. I am chief clerk in the general department of the Western Union Telegraph Company, and I know that the accounts
99 filed by me as Exhibits "Western W. U. T. Co." are correct, aggregating $394.70, and is subject to no credit. I file the original messages. The Western Union Telegraph Company had a contract for $150 per year, and, if the telegraphing exceeded $150, then the Co. was to pay 50 % of said excess. The balance of $394.70 is due and unpaid.

And further deponent saith not.

(Signed) J. R. PARKER.

I, D. C. Gallaher, a master commissioner of the United States circuit court for the district of West Virginia, do certify that all the foregoing depositions of W. A. Stuart and others were duly taken before me in the cause of W. A. Stuart and *als. vs.* The Greenbrier White Sulphur Springs Company and others and signed and sworn to in my presence; and I further certify that I have no interest in nor am I counsel or of counsel in said depositions or said cause.

Given under my hand this 21 June, 1884.

D. C. GALLAHER,
Master Com'r.

EXHIBIT "C. O. No. 1."

STATE of WEST VIRGINIA:

At a Circuit Court Held for Greenbrier County at the Court-house Thereof on the 1st day of May, 1884.

CHARLES OGLE
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

It appearing from a paper filed in this cause that this suit is now for the benefit of George M. Palmer, it is ordered that the same be hereafter prosecuted for the benefit and at the costs of said Palmer

And this cause coming on to be heard this 1st day of May, 1884, upon the bill taken for confessed and the exhibits filed, was argued by counsel; upon consideration whereof, and it appearing to
100 the court that the defendant, Greenbrier White Sulphur Springs Company, is indebted to the said Charles Ogle for the use of said George M. Palmer in the sum of $3,316.81, with interest thereon from the 26th day of July, 1881, and that the said Charles Ogle, on the 23rd day of August, 1881, acquired a mechanic's lien for the said sum upon the property in the bill mentioned, to wit, the buildings known as the hotel buildings and the ground upon which they stand, situated upon and forming a part of the property of the defendant, lying in the county of Greenbrier and known as the White Sulphur Springs, and that the said George M. Palmer is entitled to the benefit of said lien, it is therefore adjudged,

ordered, and decreed that said George M. Palmer recover against the said White Sulphur Springs Company the sum of 4,063.10, with interest thereon from the 26th day of April, 1884, until paid, and the costs of this suit, and that unless the said company, or some one for it, shall, within thirty days from this time, pay to said Palmer the said sum of money, with interest and costs, that John W. Harris, who is hereby appointed a special commissioner for the purpose, shall make sale of said hotel buildings and the ground upon which they stand to the highest bidder at public auction, on the premises, upon the following terms, viz., cash enough to pay the costs of suit and expenses of sale, and as to the residue of the purchase-money on a credit of one, two, and three years, taking from the purchaser for the deferred installments bonds with approved security and retaining the title as further security.

But, before making said sale, said commissioner shall give bond before the clerk of this court in the penalty of $100,000.00, with security to be approved by him and conditioned according to law, and shall advertise the time, place, and terms of sale by publication for four successive weeks in some newspaper published in Greenbrier county and the cities of Richmond and Baltimore, as he may deem expedient, and the said commissioner shall report his pro-
101 ceedings to this court.

A copy.
Teste: JONATHAN MAYS, *Clerk.*

Costs.

Clerk Mays	$12 00
Atto.	20 00
Clk Spotts	50
	$32 50

Teste: J. MAYS, *Clk.*

EXHIBIT R. W. M. No. 3. Filed with Deposition of R. W. Montague. D. C. Gallaher, Master.

$10,000.00. WHITE SULPHUR SPRINGS, *June* 15, 1881.

Ten years and four months after date the Greenbrier White Sulphur Springs Company promise to pay to James Peterkin or order the sum of ten thousand dollars, with interest at the rate of six per centum per annum, payable in regular annual installments after October 15, 1882, at which time the first installment of interest is due, principal and interest payable at any bank in New York, value received.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *President.*

In presence of—
RUSSELL W. MONTAGUE.

Secured by deed of trust on real estate situated near White Sulphur Springs.

(Endorsement on back, viz:) Pay to the order of George Grant. J. Grant Peterkin.

102 EXHIBIT R. W. M. No. 5. Filed with Deposition of R. W. Montague. D. C. Gallaher, Master.

$1,500.00. WHITE SULPHUR SPRINGS, 15*th June*, 1881.

Nineteen months after date the Greenbrier White Sulphur Springs Company promises to pay to James Grant Peterkin or order the sum of fifteen hundred dollars, with six per centum interest, payable at any bank in New York, value received.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *President.*

In presence of—
RUSSELL W. MONTAGUE.

Secured by deed of trust on real estate situate near White Sulphur Springs.

(Endorsement on back, viz:) Pay to the order of George Grant. J. Grant Peterkin.

EXHIBIT R. W. M. No. 4. Filed with Deposition of R. W. Montague. D. C. Gallaher, Master.

$1,500.00. WHITE SULPHUR SPRINGS, 15*th June*, 1881.

Three years and seven months after date the Greenbrier White Sulphur Springs Company promises to pay to James Grant Peterkin or order the sum of fifteen hundred dollars, with six per centum interest, payable at any bank in New York, value received.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS. *President.*

In presence of—
RUSSELL W. MONTAGUE.

Secured by deed of trust on real estate situated near White Sulphur Springs.

103 (Endorsement on back, viz:) Pay to the order of George Grant. J. Grant Peterkin.

EXHIBIT R. W. M. No. 2. Filed with Deposition of R. W. M.

Trustee's Report of the Sale of Property Situated in White Sulphur Springs and Known as Beauregard.

Feb. 19, 1884. By sale of property			$14,100 00
To advertising the property two separate times		$25	
Auctioneer's fee		7 50	
Clerk's fee		2 50	
Trustee's fee:			
5% of $300	$15		
2% of $13,800	276		
		291 00	
			326 00
Nett (net) balance available to meet trust debt			$13,774 00

RUSSELL W. MONTAGUE, *Trustee.*

EXHIBIT "R. W. M. No. 1." Filed with Deposition of R. W. Montague. D. C. Gallaher, Master, &c.

(Endorsement on back, viz:) The Greenbrier White Sulphur Springs Co. to Russell W. Montague, trustee. Trust deed. Recorded in Book No. 32, folio 598, &c., and examined. M. L. Spotts, cl'k.

This deed, made this twenty-second day of December, A. D. 1881, between the Greenbrier White Sulphur Springs Company, a corporation duly incorporated and existing under and by virtue of the laws of West Virginia, party of the first part, and Russell W.
104 Montague, of White Sulphur Springs, Greenbrier county, West Virginia, trustee, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten dollars to it paid, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell, and convey unto the said party of the second part a certain tract of land, with the buildings standing thereon, situated in said Greenbrier county, on the waters of Howard's creek, and containing two hundred and sixty-two acres of land, being the premises conveyed to the said party of the first part by James Grant Peterkin by deed dated June 15, A. D. 1881, to be recorded in the registry of deeds for said county of Greenbrier, to which deed reference is made for a more particular description of the property hereby conveyed; to have and to hold the aforegranted premises, with all the privileges and appurtenances thereto belonging, unto the said party of the second part, with general warranty of title, but in trust, nevertheless, to secure to James Grant Peterkin, of Grange Hall, Forres, Scotland, his heirs, executors, administrators, and assigns, the payment of the principal and interest, in the manner hereinafter specified, of four promissory notes—one for seven thousand two hundred and fourteen ($7,214.29)

dollars and twenty-nine cents, dated January 2, A. D. 1882, and payable in four months from the date thereof, without interest; one for fifteen hundred ($1,500) dollars, payable in nineteen months from the date thereof, with six per centum interest; one for fifteen hundred ($1,500) dollars, payable in three years and seven months from the date thereof, with six per centum interest, and one for ten thousand ($10,000) dollars, payable in ten years and four months from the date thereof, with interest at the rate of six per centum per annum, which interest on said note for ten thousand dollars shall be payable in regular annual installments after October 15, 1882, at which time the first installment of interest on said note is due and payable; all of which said notes are made payable to James Grant Peterkin or order and made by said party of the first part,
105 the said last three notes being dated June 15, 1881; and upon the payment of said notes, with interest, at the times and in the manner above specified this deed shall be void and of no effect; and in the event of default in the payment of the principal or interest of any of said notes as the same become due and payable, the said party of the second part, on being requested so to do by the said James Grant Peterkin or by his executors, administrators, or assigns, shall sell the above-granted premises at public auction in the manner directed by the Code of West Virginia, chapter 72, section 6, and the proceeds applied in the manner specified in said section.

And the said party of the first part covenants with the said party of the second part and his successors that it is seized in fee simple of the above-granted premises, and that they are free from all encumbrances, except two rights of way particularly described in said deed of James Grant Peterkin to said party of the first part, dated June 15, 1881, and that it has good right to sell and convey the above-granted premises to the said party of the second part; and the said party of the first part further covenants with the said party of the second part that it will pay all legal taxes and assessments made and levied upon said premises, and that it will not suffer any waste or deterioration of said premises so long as the trust hereby created shall continue.

In witness whereof the said The Greenbrier White Sulphur Springs Company has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged, and delivered in its name and behalf by Henry M. Mathews, its president.

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
[SEAL.] By HENRY M. MATHEWS, *President.*

106 STATE OF WEST VIRGINIA,)
Greenbrier County, White Sulphur Springs District.)

This day personally appeared before me, P. J. Rowan, a justice of the county aforesaid and district of White Sulphur Springs, within my district aforesaid, Henry M. Mathews, whose name is signed to the foregoing writing, bearing date December 22, 1881, and acknowl-

edged the same to be the deed of the Greenbrier White Sulphur Springs Company.

Given under my hand this twenty-second day of December, 1881.

P. J. ROWAN,
Justice, White Sul. Springs Dist.

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT CLERK'S OFFICE,
December 24, 1881.

This trust deed from "The Greenbrier White Sulphur Springs Company," dated the 2nd day of December, 1881, to Russel W. Montague, trustee, embracing certain real estate to secure a debt or debts due to James Grant Peterkin, of Scotland, was on this day presented in this office and, with the certificate endorsed thereon, it is, at 30 minutes past 12 o'clock m., admitted to record.

Teste: MARK L. SPOTTS, *Clerk.*

EXHIBIT "B. L. No. 1."

At a circuit court held for Greenbrier county, at the court-house thereof, on the 17th day of April, 1883.

THE BANK OF LEWISBURG
vs.
WM. A. STUART & *als.*

The subpœnas in this cause having been *been* returned executed upon all the home defendants, and the order of publication having been regularly taken and executed as to all the non-resident
107 defendants, and all of the said defendants still failing to appear and answer, the plaintiff's bill is taken for confessed; and this cause, having been regularly matured and set for hearing at rules, came on this the 17th day of April, 1883, to be heard upon the subpœnas executed, the order of publication regularly taken, and the bill taken for confessed as aforesaid, the order of attachment sued out by the plaintiff returned levied upon the real estate of the defendant, W. A. Stuart, within this State, and which has also been served upon the Greenbrier White Sulphur Springs Company, garnishee, as a debtor of W. A. Stuart; the said company still failing to appear and make answer to said garnishee and summons, the exhibits filed, and upon arguments of counsel, and it appearing to the court that the plaintiff is entitled to recover from the defendant, W. A. Stuart, the amount of the three notes in the bill mentioned, and which are here now proved in open court, with the interest accrued thereon and the costs of protest, all amounting as of this date, principal, interest, and costs aggregated, the sum of $30,678.84; that it has a lien by virtue of the attachment levied as aforesaid upon the real estate thus levied upon of the said W. A. Stuart within this State, and that by service of said order of attachment upon the Greenbrier White Sulphur Spring Company, as garnishee as aforesaid, it has also acquired a lien upon the debt due from said company to said Stuart; and it appearing further from the deed

filed and exhibited with the plaintiff's bill, dated the 17th day of March, 1882, and recorded in office of county court of said county, in Deed Book 33, page 149, whereby the said Stuart conveyed to said company the property known as the White Sulphur Springs, in Greenbrier county; that the said company is indebted to said Stuart in an amount greater than that for which the plaintiff is entitled to a decree as aforesaid, and that said debt, by reason of a reservation in said deed, constitutes a lien on said White Sulphur Springs
108 property; and it also appearing from said bill taken for confessed as aforesaid and from said deed exhibited and filed therewith that of said debt from said company to said Stuart one installment of $23,110.22 was due September 1st, 1882, and still remains unpaid, and another installment of $48,746.61 will be due September 1st, 1883: upon consideration thereof it is adjudged, ordered, and decreed that the said plaintiff recover from the said defendant, W. A. Stuart, the said sum of $30,678.84, with interest thereon from this day until paid, and its costs in this suit; that it recover the same sum, with like interest and costs, from the Greenbrier White Sulphur Springs Company, as garnishee and debtor of said Stuart, of which the said sum of $23,110.22, with interest from September 1st, 1882, shall be paid immediately, and the balance out of the next installment of said debt to Stuart on the 1st day of Sept., 1883, and that for the amount thus decreed against said company the said plaintiff shall to that extent be substituted to the rights and *loin* (lien) of said Stuart as reserved in said deed of March 17th, 1882, as aforesaid, and that the amount thus decreed against the said company shall, as and when it is paid and collected, be credited upon the amount hereinbefore decreed in favor of the plaintiff against said Stuart, and also upon the debt due to said Stuart from said company.

Abstract. Copy.
Teste: JONATHAN MAYS, *Clk.*

109 EXHIBIT "G. W. S. S. Co."

This deed, made this 17th day of March, 1882, between William A. Stuart & Ellen B., his wife, parties of the first part, and "The Greenbrier White Sulphur Springs Company," party of the second part, witnesseth:

That in consideration of the sum of three hundred and ninety thousand one hundred and ninety-four dollars and forty-four cents ($390,194.44) the parties of the first part do hereby grant and convey to the party of the second part, with special warranty, the following real estate, viz: a tract or boundary of land lying in the county of Greenbrier and State of West Virginia, containing about seven thousand acres, which was formerly known — "The White Sulphur Springs Co.," and also the interest of said Stuart in a tract of 2,800 acres lying on or near the line of the Chesapeake & Ohio Railroad Company in Alleghany county, Virginia, which formerly belonged to one Hoke, and afterwards was the property of the said White Sulphur

Springs Co., and also all improvements, buildings, add appurtenances on or belonging to said tracts of land, which said tracts were purchased by the said William A. Stuart at a sale made by comm'rs acting under a decree of the district court of the United States for the district of West Virginia, rendered in the suit in said court in which C. S. Yay and others were plaintiffs and "The White Sulphur Springs Company" and others were defendants, and which said tracts of 7,000 acres and 2,800 acres were conveyed to the said Wm. A. Stuart by A. C. Snyder, special comm'r of said district court, by deed dated this day, and reference is made to the said deed for the boundaries of said land and for more particular description thereof, and for this purpose the said deed of this date from A. C. Snyder, comm'r to the said Wm. A. Stuart is to be considered as though herein fully set out. And it is further understood that the same lots are excepted from the operation of this deed as are reserved in the aforesaid deed, viz., the cemetery, belonging to the former
110 proprietors, containing about one-fourth of an acre, the lot on which is situated the Methodist church, and the lot sold to the Right Rev. George Peterkin for the use of the Episcopal church. And it is further expressly covenanted that a lien is hereby expressly created, retained, and reserved on all of the property hereby conveyed to secure the payment of the balance of purchase-money due said Wm. A. Stuart and remaining unpaid, which balance is payable as follows:

On the 1st day of September, 1882	23,110 22
On the 1st day of September, 1883	48,746 61
On the 1st day of September, 1884	61,249 17
On the 1st day of September, 1885	33,150 24
On the 1st day of September, 1886	39,171 42
On the 1st day of September, 1887	37,968 85
On the 1st day of September, 1888	36,766 30
On the 1st day of September, 1889	15,521 15
On the 1st day of September, 1890	57,540 41
On the 1st day of September, 1891	13,000 00
On the 1st day of September, 1892	13,000 00
On the 1st day of September, 1893	13,000 00
On the 1st day of September, 1894	13,000 00
On the 1st day of September, 1895	13,000 00
On the 1st day of September, 1896	13,000 00
On the 1st day of September, 1897	13,000 00
On the 1st day of September, 1898	13,000 00
On the 1st day of September, 1899	13,000 00
On the 1st day of September, 1900	213,000 00

But it is further expressly agreed and covenanted that said reservation of lien shall not extend or apply to two acres of said land on which it is proposed to erect a hotel, near the railroad depot, said two acres to be bounded on the south by the J. R. & Ka.
111 turnpike, about opposite to the site of the hotel which was burnt in 1877, and shall be bounded on the east by the road

now leading from the depot into the grounds, and shall be laid off in such shape as will be convenient for the erection of a hotel. And it is further covenanted that the Greenbrier White Sulphur Springs Co. shall have, as attached to said contemplated hotel, the privilege of the use of water from the White Sulphur spring for drinking purposes, independent of any sale under the lien herein reserved, and shall have the right, if they think proper, to lease or to convey such privilege as attached to the two acres in any lease or conveyance they may hereafter make of the same. There is also reserved and excepted from the operation of this conveyance and from the lien for purchase-money the right of Richard H. Dulaney to have, occupy, and enjoy as heretofore two cottages erected on said springs property at the expense of said Dulaney. To have and to hold the said real estate and all improvements and appurtenances thereof, with all right, title, and interest of the parties of the first part and of all persons claiming by, through, or under them unto the said party of the second part, its successors and assigns forever.

Witness the following signatures and seals:

W. A. STUART. [SEAL.]
E. B. STUART. [SEAL.]

VIRGINIA,
Russell County, } *To wit:*

I, H. C. Stuart, a notary public in and for the county aforesaid, State of Virginia, do certify that W. A. Stuart and E. B. Stuart, his wife, whose names are signed to the writing above, bearing date on the 17th day of March, 1882, have acknowledged the same before me in my county aforesaid; and the said E. B. Stuart, being examined by me privily and apart from her husband and
112 having the said writing fully explained to her, she, the said E. B. Stuart, acknowledged the said writing to be her act and deed, declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this April 1, 1882.

H. C. STUART, *N. P.*

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT CLERK'S OFFICE,
April 10, 1882.

This deed was on this day presented in this office, and, with the certificate endorsed thereon, it is admitted to record.

Teste: MARK L. SPOTTS, *Clk.*

A copy.

Teste: MARK L. SPOTTS, *Clerk.*

U. S. Cir. Ct, Dist. W. Va.

W. A. STUART
vs.
G. W. S. S. Co.,-&c. } In Equity.

EXHIBIT "T. E." Filed with Report of D. C. Gallaher, Master.

RICHMOND, VA., *June* 17, 1884.

D. C. Gallaher, Esq.

DEAR SIR: Not knowing when your report will be filed, I now write to request that you will mention in said report that I called to your attention our claim in reference to the bonds, which is as follows:

I insist and expect to establish by evidence that of the $200,000 in bonds secured by the mortgage to Carrington & Gordon many of them were illegally and improperly issued, and do not constitute a valid lien upon the property embraced in said mortgage or deed of trust; and as the decree under which you were appointed commissioner required you to ascertain the liens upon the property of the Greenbrier White Sulphur Springs Company and the
113 priority thereof, we requested that evidence be taken by you in reference to the validity of said bonds and of the issue thereof, and by whom the same were held—that is, whether held by directors, stockholders, or innocent third parties; that you held these questions not to be within the scope of your powers as commissioner under the said decree, and therefore you must hold said bonds and their issuance to be *prima facie* valid. Judge Marshall unites with me in the objection to the validity of the lien of these bonds, and we desire that with any report you may make you file this note, and oblige,

Yours most truly, TAZEWELL ELLETT.

114 And on another day, to wit, on the 22nd day of January, 1885, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others } In Equity.

This cause was this day again heard on the papers formerly read, the report of Special Commissioner D. C. Gallaher made in pursuance to the decree rendered in this cause on the 9th day of January, 1884, and his report supplemental to his first-mentioned report, and a paper styled by said commissioner "memorandum," to be considered with the said original and supplemental reports, and upon exceptions to said report, and was argued by counsel.

On consideration whereof the court, without at this time deciding any matter in respect to said report or in respect to the exceptions aforesaid, doth award, adjudge, and decree that the said reports and the papers accompanying the same be, and the same are

hereby, recommitted to the said special commissioner, D. C. Gallaher, with instructions to reform and restate the same, and to report fully by whom the bonds issued under the trust deed of the 6th day of April, 1882, to Carrington & Gordon, trustees, are held, and on what consideration they were issued by the Greenbrier White Sulphur Springs Company, and to report further what amounts, if any, are due from present or former owners of the stock of said company on account of their subscription to stock, and what amounts such present or former owners of such stock are liable for by reason of their said ownership; and the said special commissioner is hereby authorized to recall and re-examine any witnesses heretofore examined, and to take new testimony, if desired by any party or deemed proper by himself to do so, as to any matter relevant to the subject of inquiry referred to him by this or any former decree.

And the said special commissioner, D. C. Gallaher, is directed to make report to the court of the matters aforesaid with all
115 convenient speed, together with any matters deemed pertinent by himself, or which may be specially required to be stated by any party in interest.

But, before taking the account and making the inquiries hereby ordered, the said special commissioner shall give due notice to the parties to this cause of the time and place fixed by him for executing this decree, and he shall give further notice of the time and place by publication in some newspaper published in Charleston and Parkersburg, West Virginia, at least once a week for four successive weeks, and in said publication he shall warn all creditors of the said defendant company who have not already proved their claims to come in before him and present their claims and the evidence to support the same on or before some day and at some place in the State of West Virginia to be designated by said special commissioner in said publication, and that unless said creditors shall come in and prove their claims they shall be barred from any benefit under this decree. And it appearing to the satisfaction of the court that, owing to the necessity of recommitting the said cause to said special commissioner, the same is now not in condition proper to decree a sale of the property of the said Greenbrier White Sulphur Springs Company, and the interests of all concerned will be promoted by again letting out said property, the court doth further adjudge, order, and decree that A. L. Boulware, the receiver of this court in this cause, shall, with all convenient speed and after due notice, proceed to rent out the said property of the said defendant company, with all the rights, privileges, and appurtenances thereto belonging, at public auction, to the highest bidder, in the city of Richmond, for a term of one year, to expire on the 30th day of November, 1885, upon such terms as he shall deem most advantageous to the interests of all concerned; but if the said receiver, upon trial, cannot rent the said property at public auction, then he is hereby authorized to rent out the same privately;
116 but whether rented publicly or privately, the lessee is not to take possession or have any benefit of said renting until the same shall have been reported to and approved by this court.

And the court doth further adjudge, order, and decree that said receiver shall see that the property in his hands as such receiver is kept in proper repair, and he is hereby authorized to use so much of the fund in this cause as may be necessary for that purpose, and he shall make due report of any expenditrue for such repairs.

117 And on another day, to wit, on the 30th day of May, 1885, the 2nd report of Special Commissioner D. C. Gallaher, with the depositions and exhibits, was filed in the clerk's office of said court; which report and depositions are in words and figures following, to wit:

In the United States Circuit Court for the District of West Virginia.

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others. } In Equity.

2nd Report of Special Commissioner.

CHARLESTON, WEST VIRGINIA, *May* 26, 1885.

To the honorable the circuit court of the United States for dist. of W. Va.:

By a decree entered in the above-entitled cause, at Parkersburg, on the 14th day of January, 1885, it was recommitted to the undersigned, together with his former report as well as his "supplemental statement" and "memorandum" heretofore filed, "to reform and restate the same and to report fully by whom the bonds issued under the trust deed of the 6th day of April, 1882, to Carrington and Gordon, trustees, are held and on what consideration they were issued by the Greenbrier White Sulphur Springs Company.

"And report further what amounts are due from the present or former owners of the stock of said company on account of their subscription to stock; for what amount such present or former
118 owners of such stock are liable by reason of their said ownership; and the said special commissioner is hereby authorized to recall and re-examine any witness heretofore examined and to take new testimony, if desired by any party or deemed proper by himself to do so, as to any matter relevant to the subjects of inquiry referred to him by this or any former decree."

It was further provided that notice of the time and place for taking said account should be given by publication in some newspapers published in Charleston and Parkersburg, W. Va., by publication for four successive weeks.

Note.

At suggestion of some of the parties in interest and with a desire to conform my convenience to that of the many I, in addition to the notice specifically directed to be made, in the said notice published that I would "be at the law office of Johnson, Williams & Boulware on Tuesday, March 10, 1885, to take such testimony touching the

matters of enquiry heretofore stated as parties may elect to lay before me at that place and time."

I fixed March 21st, 1885, and my office, in the city of Charleston, W. Va., as the time and place for taking the account.

I deemed it far more convenient and less expensive for me to go to Richmond, and afford every opportunity for taking the account, especially as to the stock transactions, which were specifically referred to me in the recommittal, than for the counsel and witnesses to come to West Virginia to my office.

The requirements as to the notice were in all respects complied with by the undersigned.

The following are copies of the notices published:

The Notice. Commissioner's Notice.

In the Circuit Court of the United States for the District of
119 West Virginia.

WILLIAM A. STUART and Others
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others. } In Equity.

Extract from Decree Entered Therein January 14, 1885.

"The court doth adjudge, order, and decree that the said reports and papers accompanying the same be, and the same are hereby, recommitted to the said special commissioner, D. C. Gallaher, with instructions to reform and restate the same, and to report fully by whom the bonds issued under the trust deed of the 6th day of April, 1882, to Carrington and Gordon, trustees, are held, and on what consideration they were issued by the Greenbrier White Sulphur Springs Company.

"And report further what amounts are due from the present or former owners of the stock of said company on account of their subscription to stock; for what amount such present or former owners of such stock are liable by reason of their said ownership; and the said special commissioner is hereby authorized to recall and re-examine any witness heretofore examined, and to take new testimony, if desired by any party or deemed proper by himself to do so, as to any matters relevant to the subjects of inquiry referred to him by this or any former decree.

"And the said special commissioner is directed to make a report to the court of the matters aforesaid with all convenient speed, together with any matter deemed pertinent by himself or which may be specially required to be stated by any party in interest."

In pursuance of said decree, I shall, on Saturday, March 21, 1885, at my office, in the city of Charleston, West Virginia, proceed to take, state, and report upon the matters therein directed.

120 And all creditors of the Greenbrier White Sulphur Springs Company who have not already proven their claims before me are hereby warned to come before me and present their claims and the evidence to support the same on or before the 22*st* March,

1885, as aforesaid, and unless such creditors shall so come in and prove their claims they shall be barred from any benefit under this decree.

NOTE.—I shall be at the law office of Johnson, Williams & Boulware, No. 1104 Main street, Richmond, Virginia, Tuesday, March 10th, 1885, to take such testimony touching the matters of inquiry heretofore stated as parties may elect to lay before me at that time and place.

The making of the report will be adjourned from time to time until completed.

Given under my hand this 31st January, 1885.

D. C. GALLAGHER,
Special Commissioner.

I, R. E. Horner, publisher of the Parkersburg Sentinel, a weekly newspaper published in the city of Parkersburg, Wood county, West Virginia, do hereby certify that the commissioner's notice in the case of W. A. Stuart and others *versus* The Greenbrier White Sulphur Springs Company—D. C. Gallaher, com'r—hereto attached, was published in said newspaper and posted at the front door of the courthouse for four (4) successive weeks, the first publication thereof being on the 7th day of February, 1885.

(Signed) R. E. HORNER.

470 words.
Printer's fee, $12.83.

(Same notice here.)

This notice was published for four successive weeks in the Kanawha Gazette, published in Charleston, W. Va., the first publication thereof being had on the 4th day of February, 1885.

121 *Additional Matters of Enquiry.*

By an order entered in this cause on the 19th day of March, 1885, the following additional inquiries were directed to me to report upon:

I. "Whether the several items which have been allowed by the receiver as credits, but subject to the decision of the court, viz:

(*a.*) "Insurance for the year 1883-'4, subsequent to the appointment of the receiver, thirty-seven hundred and forty-one $\frac{77}{100}$ dollars ($3,741.77).

(*b.*) "Paid for permanent repairs and improvements, twenty-four hundred and thirty $\frac{02}{100}$ dollars ($2,430.02), Jan'y 7th, 1885.

(*c.*) "And at the same date one-half of the account rendered for new articles supplied by the lessee, such as crockery, silver, linen, &c., eleven hundred and sixty-nine $\frac{78}{100}$ dollars ($1,169.78), are proper items of credit to be allowed to the lessee, William A. Stuart, in whole or in part, as specified on the face of the report of the receiver, A. L. Boulware, of January 14, 1885.

II. "Also to whom the balance in the hands of the receiver should be paid, after reserving enough of the fund to pay for necessary re-

pairs and the current expenses of the receiver, together with any matter deemed pertinent by the com'r or specially required by any of the parties."

I now submit my report:

Pursuant to notice, I went to Richmond, Va., and was at the office of Johnson, Williams & Boulware the *the* day prior to the time fixed, and also on the 10th day of March, 1885, at which time no one appeared except Tazewell Ellett, Esqr., who, representing various parties interested in the inquiry relative to the stock transactions (for which the report was in part recommitted to me), stated he was not then ready to go ahead with the matters before me, and asked
122 that I agree to take such testimony, either in Charleston, W. Va., or Richmond, Va., at some subsequent date, to which I agreed, with the proviso that such action was in nowise to jeopardize the filing of my report in time for action at the June term, 1885.

Subsequently, by letter and personal interviews, it was agreed I should go to Richmond on the 21st day of April, 1885, and, at the office above named, proceed to take such testimony as might be laid before me touching the matters of enquiry. Whilst there I prepared to examine into the matters also contained in the decree of 19th March, 1885, above referred to. Accordingly I proceeded to Richmond, and, at the time and place agreed upon, took the testimony of Wm. A. Stuart, George L. Peyton, and others.

Said depositions are filed herewith. This did delay the completion of my report.

Note.

The additional matters of enquiry required to be reported by decree of March 19, 1885, have since been reported. I hastened this report because, obviously, the enquiries therein made had no connection with the other matters required to be reported upon. The funds were in the hands of the receiver, bearing no interest, and I thought best to bring the matters before the court at once.

These are the inquiries named on the preceding page.

I am directed to "restate and reform my former reports filed in this cause."

I will state here that, in addition to my main report filed 30th day of June, 1884, at the instance of some of the parties, and because I thought it to be my duty, I filed a supplemental statement, and subsequently a "memorandum," modifying somewhat my main report.

To the filing of these some exceptions, I was informed, had
123 been or would be filed. I now proceed to reform and restate my main report.

Modifications of 1st Report.

1st. Wm. A. Stuart, in his deposition filed with the 1st report, referring to a debt of George L. Peyton, said "the Greenbrier White Sulphur Springs Company owe a balance on this debt for furniture, but whether to George L. Peyton & Co. or to George L. Peyton, J.

N. Camden, and deponent individually, cannot certainly be stated until a suit now pending in the circuit court of Augusta county, Virginia, brought to settle that question, is decided. This liability will reach "fifteen thousand dollars and probably more."

This was not reported as a debt of the Greenbrier White Sulphur Springs Company from inadvertence, and I now report it as such a liability, the amount being unascertained for the reasons stated.

2nd. In my first report it will be seen that *that* the amount of the mortgage coupon bonds held by the Bank of Lewisburg was then indefinite and unknown, although I had by every means in my power endeavored to ascertain it. There is now filed "Exhibit A. F. M.," which is a true copy of the receipt given by A. F. Mathews Sept. 11th, 1882, for the bonds left with him for the purposes therein named, as collateral for various notes therein specified. It is attached to said "supplemental statement." It recites that the number of said bonds was 190. These, with those already filed, identified, and reported, aggregate 410, being 10 more than the whole number issued. I have learned from Mr. Mathews that his receipt probably called for more and charged him with more bonds than he had really received. In this I am satisfied he is correct, for all the other bonds reported by me were exhibited before me, by me counted, marked, and marked filed, and returned to the owners. His were never laid before me.

It is fair to say the Bank of Lewisburg, or A. F. Mathews
124 for the purposes named in his receipt, only holds and is chargeable with 180 bonds instead of 190.

I therefore now report as holders of the coupon mortgage bonds—

Wm. A. Stuart holds 107 bonds, at $500	$53,500
C. R. Mason & Co., 3 bonds, at $500	1,500
Merchants' National bank, Richmond, Va., 50, at $500	25,000
Thos. Branch & Co., Richmond, Va., 60, at $500	30,000
A. F. Mathews, Bank of Lewisburg, & others, 180, at $500	90,000
Total bonds, 400 at $500	$200,000

3rd. Under the head of liens and priorities, in my 1st report I refer to a difference between W. A. Stuart and the commissioners of the U. S. district court as to a balance due from him on his purchase. I deem it best to withdraw any inferential statements made in said report by me with reference to said difference.

4th. In my said report under the head of "aggregate of all debts secured" and in the "note" thereunder, there must be added the vendor's lien notes due W. A. Stuart, and which are fully set out in the said report under the heading of "vendor's lien of W. A. Stuart." This explanation of these notes I now give (it was not known to me at the time of making my 1st report), viz: All the notes falling due from 1891 to 1899, inclusive, each for $13,000.00, are interest notes; and of the $213,000 note, falling due in 1900, $13,000 is for interest. The notes falling due prior to 1891 represent not only principal but large amounts of interest included. The purchase-money was $390,000, $200,000 of which was payable in 20 years, the balance

distributed between the date of sale, 1891, and interest payable annually on whole amount of unpaid principal. The following payments have been made:

Sept. 1, 1880	$7,670 93
" " "	23,410 22
	31,081 15

125 So that the purchase-money due to W. A. Stuart is $390,000, with interest from March 31st, 1880 ($200,000 of which bears interest at the rate of 6½ %), subject to the said credit of $31,081.15.

5th. The debt heretofore reported by me, of Mr. Erskine Miller, under the head of "liens and priorities" on the 2 acres, really belongs to W. J. Johnson, as is shown by said Johnson's petition setting up said claim in this cause.

6th. In my first report, on page 74*a*, I spoke of the indebtedness of Wm. A. Stuart on his purchase in the district court "swelling the total of the indebtedness." As the company is largely indebted to Stuart, I assume, so far as this suit is concerned, that if he fails to pay for his purchase, a sufficient amount of purchase-money due to him from the company will be diverted for that purpose.

7th. It has been suggested that when, in my former report, I use the term "illimitable" when referring to the personal property I may have meant to apply the term to the value of the property. I did not mean to be so understood. I file the inventory, but there is no testimony before me as to its value.

Proceeding to reform and restate my former report, I shall do so seriatim and in the order of original enquiries submitted to me.

1st Requirement.

What liens and encumbrances exist upon the property of the defendant company, whether such liens and encumbrances exist by virtue of said deed of trust of 6th April, 1882, or otherwise; also the amount of such liens and encumbrances, to whom owing, and the order and priority thereof respectively?

The 1st lien upon all the real estate is what W. A. Stuart owes on his purchase in the U. S. dist. court.

126 The following deferred payments were due from him for $61,290.00 each, and due respectively March 31, 1881, March 31, 1882, March 31, 1883, and March 31, 1884, and March 31, 1885, subject to certain credits thereon.

I cannot undertake to settle or state the amount now due for obvious reasons. The last bond fell due since my 1st report. I can only, under the enquiry, call attention to the fact of this being the first liability; but if Stuart fails to pay any portion of this a sufficient amount of what is due to him from the company on their purchase would be applicable and be diverted to this purpose.

See page 17 of 1st report. In addition to balance, if any, found due on 3rd bond in U. S. dist. court, those falling due March 31, 1884, and March 31, 1885, are due.

Vendor's Lien of W. A. Stuart.

By the deed of W. A. Stuart and wife to the Greenbrier White Sulphur Springs Company a lien was retained to secure various notes of the company, the first falling due Sept. 1, 1882, and for each thereafter, up to and including 1900.

An explanation of these notes is given above on page — of this report. The purchase-money due Stuart is the sum of $390,000.00, with interest from March 31, 1880 ($200,000 of which bears 6½ per cent. interest), subject to the credits of—

Sept. 1, 1880		$7,670 93
" 1, 1881		23,410 22
		$31,081 15

Statement as of June 1, 1885:

Principal	$390,000 00	
Interest	126,134 43	
		$516,134 43
Cr.		31,081 15
Total		$485,053 28

127 NOTE.—Of this amount the Bank of Lewisburg owns $30,678.84 from April 17th, 1883.

Principal	$30,678 84	
Int. to June 1st, 1885	3,906 39	
		$34,585 23
Bal. due Wm. A. Stuart		450,468 05

See 1st report, pages 20 *et seq.*
Bonds secured by the mortgage of April 6, 1882.
See pages 21, 1st report, and following.
See also pages — of this report.

Holders of Bonds.

1. William A. Stuart:

107 bonds, at $500		$53,500 00
Matured coupons:		
107 coupons, at $12.50, due Sep. 15, 1882,	$1,337 50	
" " " 30 " " " " 1883,	3,210 00	
" " " " " " " 1884,	3,210 00	
		7,757 50
Interest on $1,337.50 to June 1, 1885	$219 37	
" " 3,210.00 " " "	329 03	
" " 3,210.00 " " "	136 43	
		684 83
Interest on $53,500.00 from Sept. 15, 1884		2,273 75
Total June 1, 1885		$64,216 08

2. C. R. Mason & Co.:

3 bonds, at $500		$1,500 00
Matured coupons:		
3 coupons, at $12.50, due Sep. 15, '82	$37 50	
" " " 30 " " " '83	90 00	
" " " " " " " '84	90 00	
128		217 50
Interest on $37.50 to June 1, 1885	$6 07	
" " 90 " " "	9 23	
" " 90 " " "	3 83	
		19 13
Interest on $1,500.00 from Sept. 15, '84, to June 1, 1885		63 75
Total June 1, 1885		$1,800 38

These bonds are held absolutely for debts to that amount given up.

Bonds Held as Collateral or Claimed as Such.

1. Bonds held by Merchants' National Bank of Richmond, Virginia:

Statement

50 bonds, at $500 each		$25,000 00
50 coupons, at $12.50, due Sept. 15, 1882	$625 00	
" " " 30 " " " 1883	1,500 00	
" " " 30 " " " 1884	1,500 00	
		3,625 00
Interest on $625.00 to June 1, 1885	$101 52	
" " 1,500 " " "	153 75	
" " 1,500 " " "	63 75	
		319 02
Interest on $25,000.00 from Sept. 15, '84, to June 1, 1-85		1,062 50
Total June 1, 1885		$30,006 52

2. Bonds held by Thos. Branch & Co.:

60 bonds, at $500 each		$30,000 00
60 coupons, at $12.50, due Sept. 15, 1882	$750 00	
" " " 30 " " " 1883	1,800 00	
" " " 30 " " " 1884	1,800 00	
		4,350 00
Interest on $750.00 to June 1, 1885	$121 88	
" " 1,800 " " "	184 50	
" " 1,800 " " "	76 50	
		382 88
129 Interest on $30,000 from Sept. 15, 1884, to June 1, 1885		1,275 00
Total due June 1, 1885		$36,007 88

Upon considering the testimony I have reported these bonds as owned absolutely, together with stock issued therewith.

Note.

The 50 bonds above named are claimed to be held as collateral for a $10,000 note of the company, while the 60 bonds above are claimed to be held as collateral for two notes, each of $10,000. See deposition and proof of John Branch and letter filed, "Exhibits J. P. B.," "A. & B."

3. Bonds held by A. F. Mathews for the Bank of Lewisburg, W. Va.:

180 bonds at $500		$90,000 00
180 coupons, due Sept. 15, 1882, at $12.50	$2,250 00	
" " " " " 1883, " $30	5,400 00	
" " " " " 1884, " "	5,400 00	
		13,050 00
Interest on $2,250 to June 1, 1885	365 63	
" " 5,400 " " " "	553 50	
" " 5,400 " " " "	229 50	
		1,148 63
Interest on $90,000 from Sept. 15, '84 to June 1, '85		3,825 00
Total June 1st, 1885		$108,023 63

Note.

These bonds are held as collateral for certain notes and debts of the company specified in "A. F. M." Exhibit, filed herein and attached to the "supplemental statement" filed the 23rd December, 1884.

Debts Claimed as Specially Preferred by Wm. A. Stuart.

1st. Am't insurance paid 1882:

Principal		$4,215 47
Interest from Dec'r 1, 1882		632 29
		$4,847 76

130 2nd. Wages paid:

Principal	$2,400 00	
Interest Dec. 1, 1882	360 00	
		$2,760 00
Total June 1, 1885		$7,607 76

See deposition W. A. Stuart and page 29 of 1st report.

The Debt of James Grant Peterkin.

See pages 30, 31, and 32 of 1st report, and also trust deed and deposition of Russell W. Montague.

Bal. due:

Principal	$8,454 56
Interest to June 1, 1885	648 58
Total June 1, 1885	$9,103 14

Judgments & Decrees.

Note.

I have recalculated the interest upon these and other debts and bring it down to June 1, 1885. My first report was calculated to June 1, 1884.

CHARLES OGLE
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO. } (1.)

For benefit of Geo. M. Palmer.

Statement.

Decree	$4,063 10
Interest June 1, 1885	266 78
Costs	32 50
Total	$4,362 38

See page 33 of 1st report and Exhibit "C. O." & depositions.

M. ERSKINE MILLER
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (2.)

Judgment.

Principal	$706 36
Interest	89 76
Costs	15 90
Total	$812 02

131 Belongs to W. J. Johnson. See petition. See page 34, 1st report, and Exhibit "M. E. M.," filed with deposition of W. A. Stuart.

PERKINS & CO.
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY as Garnishee. } (3.)

Assigned to A. F. Mathews.

Statement.

Principal	$243 97
Interest	53 08
Costs	17 30
Total	$314 35

A. F. MATHEWS
vs.
SAME DEFENDANTS. } (4.)

Statement as of June 1, 1885.

Judgment	$250 19
Interest	35 80
Costs	2 00
Total	$287 99

See page 35 of 1st report and Exhibit "A. F. M."

R. B. WILSON
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (5.)

Assigned to A. F. Mathews.

Statement.

Judgment, principal	$105 70
Interest	14 29
Costs	2 00
Total	$121 99

Exhibit "R. B. W." & page 35 of 1st report.

THE CAMDEN CONSOLIDATED OIL COMPANY
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (6.)

Assigned to A. F. Mathews.

Statement.

Principal, judgment	$60 10
Interest	7 70
Costs	2 00
Total	$69 80

Exhibit "C. C. O. Co." & page 36 of 1st report.

132 J. HUNTER NICKELL
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (7.)

Assigned to A. F. Mathews.

Statement.

Principal	$153 25
Interest	22 12
Costs	2 00
Total	$177 37

Exhibit J. H. N. & page 36, 1st report.

JOHN B. HOGE
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (8.)

Assigned to A. F. Mathews.

Statement.

Judgment	$139 02
Interest	20 18
Costs	2 00
	$161 22

Exhibit J. B. H. & page 36, 1st report.

E. LEVERING & CO.
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (9.)

Assigned to A. F. Mathews.

Statement.

Judgment	$199 15
Interest	28 83
Costs	2 10
	$230 08

Exhibit E. L. & Co. & page 38, 1st report.

J. B. PEYTON
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (10.)

½ assigned to A. F. Mathews and ½ assigned to W. A. Stuart.

Statement.

Principal	$252 42
Interest	36 50
Costs	2 00
	$290 92

Exhibit J. B. P. & page 38, 1st report.

133 JOHN F. HARPER
vs.
GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } (11.)

Statement as of June 1, 1885.

Principal	$388 38
Interest	36 88
Costs	10 90
Total	$436 16

Exhibit J. F. H. & page 38 of 1st report.

Unsecured Claims, Calculated to June 1, 1885.

Recapitulation of unsecured debts, with interest calculated up to June 1, 1885.

James Gordon & Co.		$27 10
Purcell, Ladd & Co.		1,239 34
Davenport & Morris		2,501 42
Same		4,019 42
Oscar Cranz		1,250 26
Watkins, Cottrell & Co.		1,710 33
Same		1,419 61
Geo. P. Stacey & Co.		7,225 12
James Thomas & Sons		427 90
Isaac H. Carrington		1,021 00
C. G. Summers & Co.		245 55
Forbes & Mann		382 11
Edward Reese		1,249 21
F. A. Laidley & Co.		2,145 75
The "State"		32 56
J. W. Watson & Co.		853 69
W. D. Shurtz & Co.		92 74
S. S. Cottrell & Co.		429 38
J. B. Winter		665 25
134 James C. Smith		1,029 39
Geo. Gibson, Jr.		969 58
Richmond Ice Co.		1,091 73
West, Johnson & Co.		695 17
H. M. Smith & Co.		82 70
G. W. Anderson & Co.		472 70
Nelson, Matter & Co.		1,164 48
Carried forward		$32,643 49

Unsecured Debts Continued.

Am't brought forward	$32,643 49
James Clarke, assignee, &c.	3,522 44
McDowell & Co.	723 09
C. Y. Davidson & Co.	339 43
Keen & Haggerty	157 47
A. Hoen & Co.	696 47
A. S. Abell & Co.	638 75
Baltimore United Oil Co.	1,169 20
Thos. C. Basshor & Co.	56 46
Wm. Knabe & Co.	624 98
Lord & Peckham	84 52
James Bates	82 83
Peter Henderson & Co.	154 58
Wm. R. Johnson	85 30
Taliferro & Co.	58 00
Woven Wire Mattrass Co.	94 80

W. A. Stevens		63 36
Ernest W. Bowditch		666 60
Duparquet & Huat		117 10
The Hahl Manufacturing Co.		386 83
Wheeling Register		9 17
135 Baltimore American		20 65
James T. Williams & Co.		129 03
J. D. Ferguson & J. L. McLeon		348 25
C. & O. R'way Co.		140 70
W. Union Telegraph Co.		445 15
Miss Sally P. Bass		24 84
Dr. Moorman		276 25
W. J. Johnston & Co.		3,350 99
National Valley b'k, Staunton, Va. (a judgm't in Va.)		5,886 24
Mohler & Sons		482 93
Carried forward		$50,129 13

Unsecured Debts Continued.

Am't brought forward		$50,129 13
Blackmore & Kinsey, owned by W. A. Stuart		3,144 82
Courtney, " " " "		3,815 11
P. Lydecker, " " " "		1,483 78
Eugene Carrington, " " " "		322 70
Wilson Palmer, " " " "		822 68
J. H. Signiago, " " " "		1,130 37
C. R. Mason & Co., " " " "		5,454 45
James Hewees, " " " "		574 69
J. W. Geddes, " " " "		709 95
C. P. Knight, " " " "		104 10
Courtney & Armistead, " " " "		49 23
C. P. Stokes & Co., " " " "		167 64
Basshor & Co., " " " "		2,810 92
Note, " " " "		7,919 91
Note, " " " "		6,059 96
Note, " " " "		6,059 96
Note, " " " "		12,118 26
136 Note, owned by W. A. Stuart		2,914 59
Note, " " " "		2,346 00
Note, " " " "		4,629 33
Note, " " " "		5,050 47
Note, " " " "		2,165 52
Total		$123,024 46
Add debt due J. Grant Peterkin		9,103 14
		$132,127 60

Liens and Priorities upon the Real Estate, &c., of the Greenbrier White Sulphur Springs Company as of June 1st, 1885.

1st lien on the real estate of the defendant company, represented by the bonds mentioned in the conveyance of said Stuart to said company, and for which vendor's lien is expressly reserved. These bonds, running from one to twenty years, without interest till maturity, have a value as of June 1, 1885, of		$485,053 28
Out of which is first to be paid the debt of the Bank of Lewisburg, W. Va., amounting to		34,585 23
Bal. due W. A. Stuart		$450,468 05
1st lien on the furniture and other personal property and 2nd lien on real estate (excepting the 2 acres mentioned in said Stuart's deed) are 107 coupon bonds held by W. A. S.		64,216 08
3 coupon bonds held by C. R. Mason & Co.		1,800 38
		$66,016 46
NOTE.—For these bonds debts against the Co. were surrendered dollar for dollar.		
Bonds held by John P. Branch		66,016 46
Total		$132,032 92
NOTE.—The remainder of the coupon bonds secured by trust deed of April 6, 1882, amounting to $90,000, are held as collateral by Bank of Lewisburg, W. Va. I therefore give the amount of the debts for which they are so held instead of extending account of the bonds.		
Vendor's lien above		485,053 28
Am't carried forw'd		$617,086 20
		$617,086 20
1st lien upon the 2 acres reserved are the following judgments:		
Assigned to A. F. Mathews. — 1st. Perkins & Co.	$314 35	
2nd. A. F. Mathews	287 99	
" Camden Con. Oil Co.	69 80	
" J. Hunter Nickell	177 37	
" J. B. Hoge	161 22	
Assigned to Mathews & Stuart, ½ to each: 2nd. J. B. Peyton	290 92	
Assigned to A. F. Mathews. — 3rd. E. Levering & Co.	230 08	
4th. R. B. Wilson	121 99	
W. J. Johnson's — 5th. M. E. Miller	812 02	
6th. Jno. F. Harper	436 16	
		$2,901 90

Liens for which priority over general creditors is claimed:

See pages 29 and 30, 1st report. Insurance and wages	$7,607 77	
See page 33, 1st report. Mechanic's lien	4,362 38	
		11,970 15
Unsecured claims, of which some are the debts secured by bonds deposited with A. F. Mathews. See his receipt filed		123,024 46
Debt of G. L. Peyton & Co. (in suit in Va.), not less than		15,000 00
		$769,982 71
Add debt of J. Grant Peterkin, omitted		$9,103 14

138 *Note.*

John P. Branch proved two debts, as follows:

(1.) Debt to Merchants' National B'k, Richmond	$11,596 66
(2.) " " Thos. Branch & Co.	22,407 43
	$34,004 09

which must be added or not, to the extent that the court may decide his ownership of the mortgage bonds or whether he holds them as collateral and will offset them.

Stockholders and Their Liability.

Extract from decree.

I am directed to "report, further, what amounts are due from the present or former owners of the stock of said company on account of their subscription to stock; for what amount such present or former owners of such stock are liable by reason of their said ownership," &c., &c. See decree and printed notice attached hereto.

Memorandum.

From the testimony it appears that soon after the purchase of the Greenbrier White Sulphur Springs property by W. A. Stuart of the commissioners of the district court of the United States for the dist. of W. Va. an agreement theretofore entered into by said Stuart and Geo. L. Peyton was sought to be executed.

Said agreement was a contract bearing date January 30, 1880, a copy of a paper referring — and giving substance of which is filed with the deposition herein of George L. Peyton, and marked "G. P."

By the terms thereof J. N. Camden, George L. Peyton, and Wm. A. Stuart entered into a contract by which said Stuart was to buc the said springs property at the sale to be made soon thereafter by said district court, and said Stuart, Camden, and Peyton were to hold said property in the proportions, respectively, of $\frac{1}{4}$, $\frac{1}{2}$, & $\frac{1}{4}$.

139 A joint stock company was to be formed and stock in said proportions were to be held by said parties. Mr. Stuart bid in the property at said sale. A charter was applied for, and, for some reason undisclosed, was not availed of and no organization had thereunder. Neither has said original charter been produced nor inquired into by any one before me. Suffice it to say that no organization was had until in December, 1880, when a second one was obtained, and then for the first time was there any of the semblance in law to a stock company.

Meanwhile, early in the spring of 1880, and soon after said purchase by Stuart, Messrs. Stuart, Camden, and Peyton took charge of the springs property, and, under the style of "Greenbrier White Sulphur Springs C.," ran the property that season.

All the elements of a joint stock company save the, to my mind, indispensable one of a charter, accepted and acted under, existed. The testimony is that a considerable number of debts were contracted, as will appear subsequently herein; but there was no formal transfer of the property by Stuart to the company until after he had obtained his deed from said district court. In Stuart's deed he reserved a vendor's lien, but expressly excepted therefrom about two acres lying near the C. & O. r'way depot at said springs. It appears that during the season of 1880 Henry M. Mathews became interested in the company or firm running the property, and the interests were held, Stuart, ½; George L. Peyton, ¼; J. N. Camden, ¼, and H. M. Mathews, ¼. Early in December, 1880, the first regular meeting was held under the charter, which was accepted. The company regularly organized and complied with all the requirements of the law and became a legally formed, active corporation.

December 29, 1880, the first meeting was held. The capital stock subscribed was $150,000.00, divided as follows: (See charter in book of the Co., filed herewith.)

140

William A. Stuart, holding	375	shares.
Geo. L. Peyton, "	375	shares.
J. N. Camden, "	188	"
Wm. P. Thompson, "	187	"
Henry M. Mathews, "	375	"
Total	1,500	"

Resolution of Dec. 29, '80.

At said meeting a resolution was unanimously adopted increasing the capital stock of the company from $150,000 to $300,000, certificates to be sold at par value to create an "improvement fund." There is no testimony showing any issuance of stock under this resolution, unless it be the stock issued together with mortgage bonds in 1882, of which I shall hereafter speak. At the first meeting ever held of the directors, who were J. N. Camden, W. P. Thompson, Henry M. Mathews, W. A. Stuart, and Geo. L. Peyton, the following resolution was adopted: "On motion, the stockholders were called

upon to pay in their respective proportions of the four thousand dollars ($4,000) heretofore agreed to be paid, and which, when paid, will be in full of the capital stock of $150,000, provided as full paid up stock."

The directors at the same meeting adopted *ipsissimis verbis* the resolution theretofore passed by the stockholders increasing the capital stock to $300,000.00.

Mr. Stuart, for a long time president of the company and always a director, states in his deposition that said $4,000 was about all paid up, but is not sure as to the contributable portion of H. M. Mathews.

It appears that Camden and Thompson for some cause, partly detailed by deposition of Stuart, sold out their stock along in the spring of 1881, to R. A. Lancaster.

(See Stuart's deposition, page 28, and answer to interrogatory No. 96.)

141 The stock was then held by Stuart ..... 375 shares.

Peyton	375	"
Mathews	375	"
R. A. Lancaster	375	"
Total shares	1,500	$150,000.

No certificates or scrip was issued until in the following fall of 1881—Sept. 1, 1881.

The stock was issued as follows:

W. A. Stuart	375	shares.
H. M. Mathews	375	"
Geo. L. Peyton	375	"
*Charles H. Phinizy	150	"
*J. H. Dooley	100	"
*J. P. Branch	125	"
Total	1,500	

** Note.*

Geo. L. Peyton testifies, page 6 of deposition and to question 30, that R. A. Lancaster, in August, 1881, sold his stock to John P. Branch.

Branch sold 100 shares to Dooley and 150 shares to Phinizy, and as stock was issued to Dooley and Phinizy Sept. 1, 1881, Branch must have sold to them soon after he bought of Lancaster, in August, 1881.

The following further transfers were made: See scrip book.

By Phinizy,	Oct.	5th, 1881,	50	shares to	Mrs. A. E. Branch.
" Dooley,	"	4th, "	50	"	A. S. Buford.
" Branch,	"	18th, "	75	"	R. R. Bridges.

So that ultimately the stock of the company originally subscribed for and for which scrip issued stands thus:

W. A. Stuart		375	shares.
Geo. L. Peyton		375	"
	A. S. Buford	50	"
142	J. H. Dooley	50	"
	Mrs. A. E. Branch	50	"
C. H. Phinizy		100	"
R. R. Bridges		75	"
J. P. Branch		50	"
H. M. Mathews		375	"
Total		1,500	shares, at $100, $150,000.

The Liability upon the Above Stock.

I have had no little difficulty in solving, with even approximate satisfaction to myself, this inquiry.

The only question remaining unsolved is, "Was all of said stock paid up; and, if not, how much is due thereon?"

In arriving at any conclusion, it is necessary here to speak of the debts created during the season of 1880. In my opinion, any debts remaining unpaid which were created prior to the regular and legal formation of the company in December, 1880, cannot be affected by any liability of the stockholders as members of the company.

The debts contracted prior to December, 1880, were, it is true, contracted in the name of a company, but this was a company *in nubibus* merely. It had no actual legitimate existence. There was no charter, no organization, and it was, in fact and in law, a partnership, the liability of whose members could not be limited or screened from the mere fact that they transacted business under the name and style of a company. I hold, therefore, that all debts prior to the regular formation of the company in December, 1880, and now existing are liabilities of the partnership in which W. A. Stuart held ¼, Geo. L. Peyton ¼, H. M. Mathews ¼, J. N. Camden and W. P. Thompson together holding the remaining ¼.

No particular effort has been made before me to establish which, if any, of the debts now existing were created by said part-
143 nership. If there be any, then they are liabilities with which the corporation has nothing to do. An assumption thereof by the company would not even avoid the liability as partnership debts. It is possible some of these old debts may have been renewed and assumed by the company who carried them. I have not been required to report upon, nor was there any means from the testimony before me showing which, if any, of the outstanding debts existed before the company was formed. W. A. Stuart, in answer to question 115, says, in speaking of some of the debts, "I think a portion of it related back to 1880, but exactly how much I cannot

say;" and adds, "I cannot say that any of them related back to 1880."

I think this disposes of the liability of the partnership. There are no such debts affirmatively set up as such, though the testimony shows there are probably some.

II.—Liability on the $150,000 *Original Stock.*

Mr. Stuart and Mr. Peyton both testify on this point. The resolution — is cited by Mr. Stuart passed Dec. 29, 1880, by which it was directed to pay in $4,000 additional, and make the whole $150,000 paid up.

This has troubled me, and yet, upon weighing the circumstances and facts, I think such action by the company will have to be sustained.

The certificate of incorporation was sworn to as having been paid in on the subscription $50,000.

Mr. Stuart states that between $75,000 and $80,000 had been paid in. Mr. Peyton states that on each ¼ there had been paid in about $17,500, or $70,000 in all. Mr. Stuart and Mr. Peyton state that the profits of the season of 1880 were, as shown upon the books, to have been $56,000. The theory was that, these amounts having been paid in, together with the $4,000, making in all cash $130,000 according to Mr. Peyton's calculation, and about $140,000 according to
144 Mr. Stuart, the incorporators considered that they had a property with a paying and earning capacity of $56,000 the 1st year of their venture. The property had been improved, enlarged, and was enhanced in value and reputation as a springs resort. They estimated that their time, labor, and talents were worth something, and they determined to increase the stock $150,000 more, making it in all $300,000, and, as the witness Stuart states, were negotiating for such increased stock. They estimated another element of value, viz., the long time their vendor had given them on the deferred payments. They estimated their assets as worth $150,000 and started business. It seems to me it was worth it at the time. The creditors seem also to have thought so when they dealt with them. Without further comment, I report that all of the $150,000 original stock was paid up.

Liability upon 2nd Issue of Stock.

It already appears, and especially in the depositions, that in April, 1882, stock and bonds were issued. The scheme was to issue $200,000 in bonds, with coupons and secured by mortgage, and with said bonds to issue $100,000 stock. (See pages 37 and 38 of minute book of the Co. filed.)

Coupon bonds were to be issued to the amount of $200,000, to be sold at not less than 50 cents on the dollar, and that $100,000 of the stock be sold at par and to be sold together, and the purchaser of every $100 worth of stock at par was to take bonds to the amount of $200, at not less than 50 cents on the dollar. The testimony is

that W. A. Stuart took $50,000 in bonds and $25,000 in stock at one time (viz., April 28, 1882), and soon thereafter received $5,000 additional bonds, but received no stock therewith.

I find further that both Stuart and Peyton agree that John P. Branch, at the time a director, agreed to take a similar
145 amount, and the same was issued to him—that is, the scrip book shows there was issued to him April 29, 1882, 250 shares, at $100, $25,000. The scrip book also shows that 100 shares, $10,000, were issued to him April 28, 1882, and that said last scrip was by some one returned and in some one's handwriting, unknown and undisclosed so far, there was written the following: "Returned by John P. Branch, who rec'd therefor a similar certificate to Jno. W. Kerr." The original has the signatures of the president and secretary cut out. The scrip book also shows that there was also returned the scrip for the 250 shares issued April 28, 1882, by some one unknown, with the signatures of secretary and president cut out and pinned upon the scrip, neither Mr. Stuart nor Mr. Peyton knowing anything of these transactions. No transfer appears on the books of the company. There was no order of the board agreeing to accept the return of the certificates. Mr. Stuart states and so does Mr. Peyton it was their understanding that Mr. Branch agreed to take for himself and friends $50,000 bonds and $25,000 stock, or about those amounts. I report the facts as I find them. I am compelled to report that John P. Branch is a stockholder first as to the 250 shares referred to. The book show it, and the burden and duty are imposed upon him to show the contrary. As to the 100 shares transferred to J. W. Kerr, Mr. Branch is clearly liable. The deposition of Kerr himself, to my mind, removes any doubt. As for the bonds issued to Mr. Branch, it is of no especial materiality, I take it, whether he holds them absolutely or as collateral. In addition to Mr. Stuart's testimony, Mr. Peyton testifies (6th question) that when he and Mr. Mathews declined to take any of the bonds and stock Mr. Branch said, in the directors' meeting, if Peyton and Mathews would waive their right to take them he (Branch) would buy them or have them placed.

If Mr. Branch holds the bonds as collateral, he also holds the stock, for by resolution one who took bonds had to take stock also: it was part of Branch's collateral. Why then return them?
146 If he owns the bonds he is liable for the stock issued therewith, and cannot return them in the manner attempted.

I therefore, and for other reasons apparent in the testimony, report the bonds and stocks as follows:

Held Absolutely.

William A. Stuart holds and owns	107	bonds	----------		$53,500 00
C. R. Mason & Co. " "	3	"	----------		1,500 00
John P. Branch " "	110	"	----------		55,000 00
					$110,000 00

Stock Held.

Wm. A. Stuart holds and owns 250 shares		$25,000 00
J. P. Branch " " 250 "	$25,000	
And also the 10 shares sought to be assigned to		
J. W. Kerr	10,000	
		$35,000 00

NOTE.—Mr. Stuart rec'd no stock, he states, on the $5,000 of bonds, a portion of which Mason & Co. own.

Wm. A. Stuart's Bonds & Stock.

Mr. Stuart files with his deposition, attached to the 1st report of the undersigned, a copy of a paper showing the surrender by him of liabilities of the company in return for which he received from H. M. Mathews $50,000 in bonds and $25,000 of stock. These debts were thus surrendered dollar for dollar. The object in issuing bonds and stock was to raise money to pay off the debts and for an improvement fund. The records of the company and the testimony show this. Mr. Stuart in effect took the bonds and stock and therewith carried out the purpose of the company and saved it annoyance and, perhaps, litigation. There is nothing to show that he acted as agent for the company, and when debts against the company were paid, dollar for dollar, with its own bonds the holder of those obligations was entitled to the bonds. This
147 arrangement was acquiesced in by all, so far as it is shown. I therefore report Mr. Stuart as paid up on his stock. The same as to C. R. Mason & Co.

As to Mr. John P. Branch, he claims by letters (Exhibit J. P. B "A" & "B") to hold his stock as collateral. The evidence is not within him. I presume he could, as to his liability upon the 250 shares, offset that by surrendering his debts against the Co. *pro tanto*, and he owes the company for the deficiency between aggregate claims against the company and amount of bonds and stock for which he owes, including $10,000 which he sought to transfer to Jno. W. Kerr. Mr. Branch has given no sworn statement as to the bonds or stock, and my conclusions are reached upon the testimony and facts as I find them. The deposition of Jno. W. Kerr, the alleged assignee of Branch, shows that Kerr "thought it a good thing," and that he paid par therefor and gave his note, and the stock was held as collateral by Thos. Branch & Co. to secure the note. Mr. Branch is clearly liable on this stock transferred—if it can be called "transferred"—to Kerr. He may clear himself of liability on the 250 shares. He has not done so.

The Phoebus Account.

By the original decree of Jan'y, 1884, I was directed to settle the accounts of H. Phoebus, the lessee for the year 1883. I have given my reasons in my first report, page 81, why I did not, and could not complete that settlement in time to file it with my first report.

It was understood and agreed that August 4th, 1884, and the White Sulphur Springs should be the time and place for settling said acc's.

Accordingly I proceeded there and met Mr. Phoebus' book-keeper and counsel, who were ready to go ahead. After notifying Mr. Stuart and A. F. Mathews of my readiness to proceed I began and completed said settlement. I can only say that I examined every item and required voucher therefor, which was produced. I
148 enclose a statement of the account and settlement, and no one has excepted to said settlement, which has lain in my office since its completion, in September last.

I file said settlement herewith, but detached and in a separate package, though I file it as part hereof, and as a report upon that portion of my 1st report as I was directed to modify or report upon.

There being nothing further to report upon, I submit this and accompanying depositions, exhibits, and the Phoebus acc's and settlement, this 26th May, 1885.

Very resp'y,

D. C. GALLAHER,
Master Com'r.

Costs of report:

Parkersburg Sentinel ---	$12 83
Kanawha Gazette ------	15 00
Com'r expenses, making report, &c. ----------	----
	8

[Endorsed:] Part of report No. 2. Settlements of accounts of H. Phoebus, lessee, 1883. Filed with report No. 2 and as part thereof. D. C. Gallaher, master com'r, U. S. C. C., D. W. Va.

Memorandum.

The within settlement of the accounts of H. Phoebus,
149 directed to be made by the original decree of reference, was made during the summer of 1884, and has lain in my office since.

It was not completed in time for filing with my original report in June, 1884, and as the whole case was recommitted to me (see orders of reference), I now file it as part of my 2nd report.

I file it and the depositions separately. Every item allowed in said acc't was examined by me and proper voucher therefor demanded, and the same was exhibited, examined, and the items separately passed upon and allowed. The account is correct as stated.

Resp'y,

D. C. GALLAHER,
Master Com'r, U. S. C. C., D. W. Va.

Statement of Sundry Supplies Purchased for Use at White Sulphur Springs During the Season of 1883 by H. Phoebus.

1883.		Steward's orders:	
June	13.	M. S. Hoyleman, potatoes	15 00
	15.	Halstead Bros., eggs, chickens, etc.	100 76
	"	John O. Furrall, rhubarb and leeks	2 25
	"	D. S. Wickline, butter	9 80
	16.	P. B. Bull, potatoes	7 50
	18.	Jno. O. Furrall, currants	1 00
	20.	B. Vanstaver, eggs, chickens, etc.	56 35
	"	Jno. O. Furrall, cherries	2 10
	21.	Do. currants & rhubarb	3 50
	"	Richard Dean, butter and mutton	3 12
	22.	I. L. Smith, butter & asparagus	6 00
	"	Halstead Bros., eggs, chickens, etc.	107 99
	23.	B. Holman, potatoes	3 30
	"	McPherson, butter & asparagus	3 19
150	25.	John Gallaher, 2,355 lbs. beef on hoof	82 41
	27.	John Furrall, cherries	1 00
	"	B. Vanstaver, eggs, chickens, etc.	129 70
	28.	McPherson, butter, etc.	4 10
	29.	Halstead Bros., eggs, chickens, &c.	139 89
July	2.	Jno. Farrell, cherries	1 20
	3.	Hennessey, beans	1 00
	4.	John Farrell, rhubarb & cherries	4 00
	"	B. Vanstaver, chicken-, eggs, & butter	108 40
	"	Hennessey, beans	1 20
	5.	S. B. Gardner, currants & potatoes	1 25
	"	John T. Criss, chickens, eggs, &c.	37 60
	6.	Hennessey, beans	1 20
	7.	S. B. Gardner, currants and potatoes	2 30
	"	McPherson, butter	3 40
	"	John Farrell, cherries	2 00
	"	Hennessey, potatoes	2 00
	9.	" "	3 00
	"	S. B. Gardner, "	4 20
	10.	B. Vanstaver, chickens, eggs, &c.	73 99
	"	Jno. Farrell, cherries	1 25
	"	E. Hennessey, potatoes	9 50
	"	S. B. Gardner, "	3 75
	11.	E. Hennessey, "	13 00
	12.	Jno. Hoyleman, "	1 62
	"	E. Hennessey, "	7 50
	"	Halstead Bros., chicken-, eggs, etc.	243 45
	"	Do., " " "	211 13
	13.	E. T. Williams, potatoes	5 00
	"	John T. Peney, currants	3 88
151	14.	R. B. Hoyleman, chickens, eggs, &c.	12 90
	"	John F. Parkins, potatoes	26 50

1883.			
July	14.	Oscar Caldwell, pheasants	50
	"	McPherson, butter	3 31
	17.	John Ferrall, berries and rhubarb	4 25
	"	R. B. Hoyleman, potatoes	30 00
	"	W. A. Atkinson, "	12 60
	"	Rob't Perry, beans	2 00
	"	Gardner, potatoes	6 50
	"	B. Vanstaver, chickens, eggs, &c.	125 82
	"	Halstead Bros., " " "	169 94
	18.	G. R. Hoke, " " "	9 95
	18.	O. H. Coulter, " " "	40 86
	"	John F. Parkins, potatoes	12 00
		E. Hennessey, "	27 00
	19.	A. A. Atkinson, "	19 75
	"	B. Vanstaver, chickens, eggs, &c.	109 83
	20.	Halstead Bros., " "	181 43
	"	W. Bennett, potatoes, beans, &c.	7 25
	"	I. M. Skaggs, chickens, eggs, & butter	45 50
	21.	Jno. Hardman, potatoes	5 40
	"	J. W. Heffner, chickens, eggs, &c.	14 01
	"	O. Caldwell, pheasants	20
	"	McPherson, butter and beans	4 38
	"	C. H. Coulter, chickens	21 25
	"	W. T. Heffner, potatoes	5 00
	"	John Farrell, "	2 12
	24.	Halstead Bros., chickens, eggs, &c.	125 59
	"	B. Vanstaver, " "	74 90
	25.	James Mitchell, " "	36 24
	"	W. Bennett, beans	1 50
152	25.	G. Hardman, chickens & pheasants	20
	26.	Thos. Christian, berries	1 09
	"	C. H. Coulter, chickens & eggs	48 68
	"	John Perry, berries	1 00
	27.	H. Hanger, chickens, eggs, &c.	76 21
	"	Halstead Bros., potatoes	2 25
	"	John Farrell, berries	2 80
	"	B. Vanstaver, chicken-, eggs, &c.	72 88
	28.	Bowen, venison	4 27
	"	Hoyleman, chickens	19 40
	"	I. Smith, venison	3 43
	"	A. Buell, apples	1 00
	30.	John Farrell, berries	1 20
	"	McPherson, milk	8 75
	"	Gillespie, pheasants	1 75
	"	Hoyleman, do.	1 00
	"	I. Smith, wild turkey	4 00
	31.	I. D. Tulley, milk and potatoes	19 75
	"	Thos. Patterson, eggs	3 67
	"	Eakle, potatoes	59
	"	G. Hoffman, chickens, berries, &c.	8 73

1883.

July	31.	Gillespie, birds	85
	"	Do. do.	1 00
	"	B. Vanstaver, chickens, eggs, &c.	68 59
	"	Halstead Bros., " "	198 26
	"	N. Hollesapper, " "	11 31
August	2.	A. Arpy, pheasants	3 50
	"	Wm. Bennett, beans	2 00
	"	I. Sydenstriker, pheasants	3 00
	4.	Gillespie, "	1 20
	2.	C. H. Coulter, chickens	25 63
153	3.	Halstead Bros., eggs, chickens, &c.	70 66
	"	B. Vanstaver, " "	91 69
	"	I. Gillespie, pheasants	50
	"	John T. Perry, chickens	8 50
	4.	T. A. Hennings, "	55 00
	"	I. Snydecker, pheasant	5 40
	"	McPherson, milk	8 00
	"	Gillespie, pheasant	1 80
	"	Beaver, corn	22 92
	"	Montague, potatoes	120 00
	"	Gillespie, milk	10 25
	"	Kirkpatrick, "	3 40
	"	John Cain, pheasant	80
	"	J. H. Alexander, fish	5 00
	6.	C. H. Coulter, chickens, eggs, &c	49 18
	"	I. F. Gillespie, pheasant	50
	"	Wm. Bennett, beans and potatoes	2 50
	"	C. F. Bottom, watermelons & cantaloupes	23 14
	"	Rob't Burton, lamp chimneys	20
	"	J. M. Mann, milk	23 30
	7.	M. F. Bennett, beans	2 20
	6.	Jno. Gallagher, milk	30 00
	7.	J. Heffner, chickens	33 19
	"	B. Vanstaver, eggs, &c.	107 95
	"	T. A. Hennings, " "	41 81
	"	J. Dean, pheasant	50
	"	Halstead Bros., chickens, eggs, &c.	85 86
	"	J. L. Wright, " & potatoes	17 63
	8.	J. L. Smith, hams	8 01
	"	Perry, pheasant	3 50
	"	Jno. Farrell, berries	2 40
154	8.	Snydecker, pheasants	7 20
	"	R. Vance, "	50
	9.	Whitman, "	5 00
	"	Montague, potatoes	99 60
	"	Gillespie, pheasant	50
	"	do. potatoes and corn	2 63
	"	Hoyleman, chickens	25 13
	10.	Perry, chickens and eggs	53 63
	"	Halstead Bros., chickens and eggs	88 80

1883.

August	10.	Mayo, pheasant	50
	"	Dolins, corn	37 50
	"	B. Vanstaver, chickens, eggs, &c.	153 25
	"	Gillespie, pheasants	6 60
	"	Hennings, chickens, eggs, &c.	97 33
	"	T. C. Fry, " "	17 55
	"	T. Cain, pheasant	50
	"	Tulley, "	75
	"	Snydecker, "	4 80
	"	McPherson, milk	9 25
	13.	Gillespie, "	2 90
	"	Kirkpatrick, "	4 05
	"	Dolin, corn	31 95
	"	Green, potatoes	12 80
	"	Wright, potatoes and apples	14 80
	"	Bearer, chickens, eggs, &c.	36 55
	14.	B. Vanstaver, " "	177 91
	"	Perry, " "	24 33
	"	Gillespie, pheasants	5 40
	"	Suiber, potatoes	13 50
	"	Dean, pheasants	25
	15.	Perry, "	4 08
155	15.	Dolin, corn	30 55
	"	Hoyleman, chickens	15 25
	"	Heffner, "	42 00
	"	Gillespie, pheasants	1 20
	"	C. H. Coulter, chickens	23 32
	"	Halstead Bros., "	181 98
	16.	I. L. Smith, potatoes	4 00
	"	Hemings, chickens, eggs, &c.	98 42
	"	Dooley, potatoes	15 50
	18.	Tully, pheasants	60
	"	Farrell, potatoes	2 00
	"	Gillespie, milk	1 55
	"	Do. wild turkey	75
	"	S. H. Coulter, potatoes	3 00
	"	Harper, milk	25 55
	"	J. M. Mann, milk	20 45
	"	McPherson, "	9 18
	"	Gillespie, "	3 05
	"	Dean, pheasant	75
	"	Williams, milk	4 95
	"	Gillespie, pheasant	1 00
	"	Dean, "	1 50
	"	Wagner, wild turkey	1 50
	"	Gallgher, milk	27 35
	17.	Tulley, pheasants	1 25
	"	Hoyleman, chickens, eggs, &c.	24 31
	"	Dean, milk	10 90

1883.

August	17.	Snydecker, pheasants	4 20
	"	Dean, "	1 75
	"	Gillespie, "	2 75
	"	B. Vanstaver, chickens, eggs, &c.	199 73
	"	L. Lotenzo, Watermelons	24 00
156	August	17. Casper, beans	1 00
	"	Dolin, corn	35 06
August	20.	Tilman, milk	17 20
	"	Garing, "	12 90
	"	Hennessey, chickens, &c.	40 00
	"	Kenney, milk	14 80
	"	C. T. Bottom, watermelons	28 00
	21.	Henings, chickens	71 04
	"	Dean, pheasant	1 00
	"	Apper, onions	40
	"	Bearer, pheasants	1 60
	"	Do. "	2 00
	"	A. F. Wicker, milk	26 25
	"	Snydecker, pheasant	4 20
	"	Mayo, potatoes	6 25
	"	B. Vanstaver, chickens, eggs, &c.	131 68
	"	Tully, milk	44 40
	"	Farrell, potatoes	21 60
	22.	Do. "	43 80
	"	Dolin, corn	14 76
	"	Henings, chickens, eggs, &c.	41 53
	"	Brown, pheasants	2 00
	"	Dolin, "	1 00
	"	Carsins, "	3 00
	"	Carper, "	2 00
	"	Halstead Bros., chickens, eggs, &c.	188 03
	23.	Snydecker, pheasants	3 00
	"	Hennings, chickens, eggs, &c.	73 28
	"	Snydecker, pheasants	3 00
	"	Caldwell, "	50
	24.	Hoyleman, potatoes	3 00
157	24.	Heffner, chickens	26 05
	"	Carner, pheasants	3 00
	"	B. Vanstaver, chickens, eggs, &c.	149 69
	"	Perry, "	26 50
	25.	Harper, milk	9 45
	"	Hoyleman, pheasants	50
	"	Snydecker, "	69
	"	Perry, "	1 50
	"	Dolin, potatoes	10 00
	"	Hoke, pheasants	1 35
	"	McPherson, milk	9 19
	"	Kirkpatrick, "	6 80
	"	Gillespie, "	2 35
	"	Caldwell, pheasants	3 50

1883.			
August	25.	Dean, milk	3 20
	"	Hennings, chickens, eggs, &c.	37 26
	27.	Gardner, pheasant	50
	"	Jones, "	1 00
	"	Bearer, "	50
	"	Lewis, beans	3 00
	"	Ceppi, watermelons	30 00
	28.	Kenney, pheasants	1 50
	"	Hennings, chickens, eggs, &c.	54 04
	"	Dean, pheasants	3 00
	"	Dolin, chickens, eggs, etc.	13 40
	"	I. N. Gunn, pheasant	50
	"	E. Jones, "	50
	"	B. Vanstaver, chickens, eggs, &c.	164 39
	29.	Halstead Bros., " "	116 56
	"	Whitney, pheasants	3 50
	"	Snydecker, "	3 50
158	29.	Buzzard, pheasants	1 20
	"	Jones, "	2 40
	30.	Perry, "	1 00
	"	Caldwell, venison	2 20
	"	McPherson, milk	5 25
	"	Dolin, chickens, &c.	13 62
	31.	Lewis, beans	3 54
	"	B. Vanstaver, chickens, &c.	96 25
	"	I. W. Mann, milk	25 65
	"	Gillespie, "	1 80
	"	Do. "	4 95
	"	Kirkpatrick, "	3 25
Sept.	1.	C. Tilman, "	9 30
	"	Gallagher, "	30 60
	"	J. D. Tulley, "	24 20
	"	A. Williams, "	5 55
	"	T. A. Henning, chickens, eggs, &c.	97 27
	"	T. Clifford, milk	25 15
	"	A. F. Wicker, milk	12 00
	3.	J. T. Harper, "	5 95
	"	John Farrell, potatoes	15 00
	4.	Snydecker, pheasants	1 00
	"	Dolin, do. and eggs	4 40
	"	J. F. Garing, milk	5 65
	"	D. H. Coulter, chickens	11 25
	"	B. Vanstaver, " &c.	91 40
	5.	Halstead Bros., " "	70 78
	"	B. F. Mayo, potatoes	6 50
	"	McPherson, butter	2 50
	"	Wm. Hoffman, pheasants	1 00
	6.	C. H. Coulter, potatoes, eggs, &c.	13 37
159	7.	C. Browns, pheasants	2 40
	"	B. Vanstaver, chickens	47 68

1883.		
Sept.	7. R. Whitman, wild turkey	1 00
	8. Mayo, potatoes	8 00
	14. Dolin, "	9 23
	15. J. M. Mann, milk	21 40
	26. 380 lbs. sheep	13 50
	Steward's orders up to June 13th	678 96
		$8,623 03

Statement of Wages Paid to Employees at White Sulphur Springs from December 9th, 1882, to November 8th, 1883, by H. Phoebus.

	James Ware, sup't meal dep't	$1,971 66
	B. F. Eakle, chief clerk	1,000 00
	G. Falkenberg, book-keeper	607 98
	W. H. Nayson, room clerk	600 00
	R. B. Wilson, ass't do.	242 00
	F. N. Pike, correspondent	300 00
	M. L. Pike, do.	79 99
	M. Williamson, night clerk	251 99
	H. Keyes, billiards	232 50
	H. C. Caldwell, bath-house	85 00
	George Kesley, bill clerk	400 00
	Henry Gilmer, livery "	48 00
	Jacob Blumelinck, bartender	202 50
	M. Henry, ass't do.	123 33
	R. W. England, gen'l utility man	105 33
160	Andrew Burrell, bell boy	47 00
	N. D. Fairfax, do.	38 50
	Oliver Kesley, floorman	57 50
	Wm. Teams, "	50 00
	R. Kidd, "	43 00
	Nick Spurlock, "	55 50
	Wm. Smith, "	62 50
	Geo. Davenport, "	43 50
	Wm. Bannister, "	46 00
	Ben. Pleasants, "	58 00
	Sam. Rodgers, "	58 50
	Henry Chambers, "	52 52
	Henry Hollins, "	52 00
	Peter Holmes, "	48 00
	Noah Jackson, "	42 00
	Hayden Holmes, "	46 50
	John H. Billups, "	49 00
	J. F. Armistead, "	40 50
	Peter Walker, "	57 75
	Nathan James, "	55 50
	William Coleman, porter	78 00
	Robert Miles, ass't do.	55 00
	Morris Watts, ten-pin alley	68 00

	Isaam Thurman, scrubber	$48 80
	Nat. Spurlock, billiards	51 50
	Wm. Smith, Jr., office boy	14 80
	Pamelia Burwell, bath-house	17 99
	Doc. Quarles, water-closets	41 60
	Harvey Harper, ball-room	53 00
	Kane Ward, gen'l help	28 95
	Albert Parsons, gen'l help	41 60
161	Nelson Meadows, floorman	39 50
	George Gilliam, "	49 50
	Jack Bowles, floorman	36 40
	Sophia Burrell, bath-house	34 66
	Wm. Banks, office	46 50
	Frank McClure, porches	34 80
	Alfred Booker, office	31 00
	Abner Potter, bath-house	18 80
	Sanford Lyle, floorman	22 50
	Jack Frost, bar	41 20
	Miss A. L. Barton, correspondent	90 00
	W. D. Rider, baggage-master	47 00
	Chas. Langham, bath-house	33 20
	Mrs. Getty, " "	30 00
	Jeff. Harrison, bell boy	36 50
	Henry Banks, " "	36 50
	J. J. McGrath, steward	1,500 00
	Do. bill of expenses	316 15
	J. N. McNeil, storekeeper	353 32
	Chris. Sieman, head cook	631 50
	Henry Durst, 2nd cook	428 66
	Henry Hermann, 1st roast cook	226 66
	Leonard Eckert, 2nd " "	216 99
	Theod. Fulner, 3rd " "	153 00
	Chas. Zimmerman, 1st frying cook	134 09
	Carl Michael, ass't baker	153 50
	August Gunther, 2nd frying cook	159 99
	John Pujor, 3rd " "	165 00
	Chas. Schubert, head butcher	372 00
	Theod. Kohmes, 2nd "	227 24
	Fred'k Müller, 3rd butcher	149 66
162	Mar. Tyron, head cartemanger	229 33
	Herman Tuthwith, 2nd do.	166 74
	Paul Tyron, fireman	114 24
	John Scherms, potwasher	69 58
	Rob't Schlei, do.	79 25
	Susan Murphy, 1st veg. cook	115 74
	Julia Delaney, 2nd " "	69 25
	Wyatt Hobson, help cook	64 00
	F. Kincke, h'd pastry cook	445 99
	F. Wald, 2nd " "	209 25
	F. Uphill, 3rd " "	144 00

	C. Spehr, ice-cream man	$141 74
	Phillip Roos, h'd baker	159 00
	W. Huber, 2nd "	74 16
	Charles Hopper, 3rd "	40 50
	Lizzie Sergward, help "	54 50
	Michael O'Neal, head carver	262 50
	B. F. Toody, 2nd "	146 74
	Thos. Beggerton, 3rd "	129 16
	Geo. Haskins, 4th "	115 50
	Michael Harnessey, h'd yardman	96 75
	Wm. Smith, iceman	96 75
	Morgan James, cleaning	54 59
	Harris Spurlock, waiter	50 00
	Geo. H. Kidd, "	40 83
	Rob't Calloway, "	80 58
	Sophia Toinley, help in kitchen	60
	Geo. W. Morton, cleaning	6 93
	Do. waiter	19 00
	Jno. Wilson, fruit pantry	117 08
	James Bradley, fruit pantry	69 81
163	Peter King, scrapper	83 00
	James Donnelly, scrapper	63 41
	John Quinn, pantryman	80 41
	Rob't F. Burton, coffeeman	89 25
	Osborne Preston, cleaning	40 40
	Peter Early, "	42 90
	Rufus Shelton, "	10 15
	Sam'l Jackson, silverman	16 94
	Henry Moorman, waiter	41 99
	Ben Williams, cleaning	35 31
	Albert Jones, "	51 56
	Edmund Edridge, "	4 33
	Wesley Perry, glassman	28 73
	W. H. Gillam, cleaning	50 73
	Katie Donahue, dairy	24 50
	Nathan Randolph, h'd waiter	403 33
	Lloyd Marshall, waiter	83 50
	Wm. Stanard, "	88 33
	Jno. Poindexter, "	66 66
	Wm. Hill, "	52 99
	Spencer Vass, "	58 66
	Rob't Washington, "	56 00
	Edward Lee, "	70 00
	Henry Beard, "	69 33
	Wm. Bond, "	70 00
	Wm. Rollins, "	68 33
	Dan'l Rollins, "	68 66
	Austin Miller, "	70 00
	Wm. Albert Dabney, waiter	57 33
	Cornelius Adams, "	62 66
	Wm. Jinn, "	52 66

164	Mrs. Mary Hicks, helps chambermaid	$42 60
	Frank J. Bowers, watchman	95 05
	James H. Green, waiter	48 99
	Jordan C. Green, "	64 33
	Joseph S. Thomas, "	67 99
	N. Covington, "	66 66
	Alexander Davis, "	55 66
	Isaah Butler, "	52 33
	Chas. S. Butler, "	56 33
	Richard Johnson, "	56 99
	W. H. Jones, "	52 33
	Chas. H. Bowie, "	52 33
	Alfonso Hutley, "	59 66
	John Fisher, "	64 66
	James Daker, "	53 33
	Benj. T. Brinkley, "	57 66
	Jacob Buckner, "	52 66
	Levi Coombs, "	58 16
	W. H. Stout, "	57 65
	Sam'l Hatch, "	79 99
	Oliver Kenley Jr., "	51 66
	Daniel Gibson, Jr., "	66 00
	Frank Tasker, Jr., "	55 16
	Edward Foot, "	69 36
	Anderson Roan, "	53 66
	Rob't Squirrell,	65 06
	Jordan Carter, dish-washer	45
	Woodward Carrington, dish-washer	1 68
	Simon Nash, "	1 67
	David Clarke, cleaner	1 75
	Fleming B. Jones, dish-washer	1 25
165	Joseph Thomas, ass't store-keeper	63 66
	E. A. Bowling, silverman	68 99
	August Meyers, do.	39 17
	Wm. Slaughter, cl. carving table	39 50
	J. J. Hoyleman, ass't store-keeper	71 00
	Wm. Terry, dish-washer	13 50
	Jordan Lynch, watchman	3 55
	Paris Black, dish-washer	32 93
	Sam'l Contee, waiter	47 32
	Carter Neal, "	55 66
	James Moon, "	45 99
	David Pritt, "	45 98
	Jno. W. Smith, "	44 99
	Wm. G. Owens "	37 51
	Lewis W. Mitchell, "	42 66
	Chas. F. Wilson, "	59 99
	James H. Johnston, "	47 32
	Benj. Lyle, "	50 66
	Wm. H. Farrell, "	44 66
	George Wesley, "	43 66

	James Taylor,	waiter	844 66
	Julius Robinson,	"	45 98
	Joseph Banks,	"	44 66
	Wm. H. Joppin,	"	52 32
	George Palmer,	"	47 66
	Nathan Smith,	"	43 32
	Eliza Jackson,	"	44 99
	Peter Johnson,	"	41 19
	Joseph Tilgman,	"	44 66
	Richard Hood,	"	53 66
	Parton Boyer,	"	55 66
166	Benj. Dorsh,	waiter	51 99
	Wm. Malveen,	"	23 66
	George Franklin,	"	36 66
	James Cook,	"	52 99
	J. Smith,	"	53 99
	Joseph Williams,	"	63 99
	Wm. Anderson,	"	51 66
	E. P. Jackson,	"	59 99
	Isaac Field,	"	57 99
	James Collins,	"	50 49
	Lindsay Johnson	"	50 66
	Chas. Buckner,	"	56 54
	Wm. Ridley,	"	50 99
	David Jordan,	"	53 66
	Nathan Williams,	"	50 99
	Rob't Saunders,	"	43 99
	Shos. D. Steptoe,	"	44 33
	Thos. Cooper,	"	39 99
	James N. Smith, 2d	waiter	138 32
	J. H. Brown,	help cook	46 75
	John Jones,	waiter	39 33
	George Rooke,	peace-maker	190 75
	Cary R. Roane,	waiter	43 33
	Richard Stovall,	"	35 00
	Claiborne Johnson,	waiter	22 33
	Wm. Berkely,	"	36 66
	R. J. Smith,	chicken man	46 66
	Silas Foster,	cook's help	30 77
	Jas. E. Watson,	dish-washer	7 15
	Wm. Davis,	"	26 58
	Geo. McFadden,	dish-washer	41 50
167	Wm. Bell,	"	13 21
	Sarah Whitehead,	kitchen girl	1 60
	Alexander Perry,	glassman	28 82
	Chas. Howard,	silverman	31 16
	Fred'k Morris,	"	31 17
	Rufus Stewart,	dish-washer	34 91
	Wm. Carter,	swillman	42 30
	Clem. Young,	slaughterer	94 66
	J. L. Frazier,	"	39 99

Arthur Eagan, dish-washer	$12	13
F. B. Jones, "	29	79
John Miner, "	18	20
Jerry Alexander, iceman	39	50
G. W. Hodges, carver	119	99
James Hamilton, fruit pantry	10	00
Isaiah Hatton, waiter	38	00
Thos. Sutton, "	88	66
Sam'l Brown, "	42	99
Richard Snead, "	62	00
Patrick Mills, dish-washer	5	72
Philip I. Pryor, "		43
Frank Anderson, waiter	42	00
Henson Jackson, "	25	33
Wm. Seeney, "	40	00
R. B. Hopkins, "	15	00
Daniel Sands, "	48	33
Jeremiah Rider, "	46	33
J. W. Shields, "	45	33
Aaron Marshall, "	16	66
Wm. Henry, "	42	00
Edward Johnson, waiter	43	50
168 Hamilton Russell, "	41	67
John Wray, "	37	00
Jno. Simpson, waiter	42	00
Wm. L. Bracey, "	63	33
Bailes Bowyer, "	53	00
Jacob Taylor, "	25	33
Jordan Carter, "	8	22
Joseph Sellers, "	43	66
Spicer Neal, "	51	00
Wm. A. Jackson, "	49	66
Alex'r Owens, "	66	53
Wm. Crandall, "	43	66
Jno. Moore, "	42	33
Walter Dorsey, "	54	67
Henry C. Hawkins, waiter	62	66
Joshua A. Brown, "	42	00
Geo. Tompkins, "	44	66
Agnes Covington, chambermaid	41	00
Henry Moore, waiter	35	33
Wilson Davis, cl. steam tables	35	75
Pleasant Lewis, waiter	32	00
Wm. Kenney, "	32	00
Jordan Lynch, watchman	12	00
Horace Snyder, dish-washer	2	60
Wm. Stewart, "	5	16
Andrew Woodfolk, "	20	33
Rob't Winn, "	6	07
Henry L. Jackson, "	49	50

	Jno. L. Washington, 4th waiter	885 16
	Joshua Denick, Sr., "	65 45
	Joshua Denick, Jr., "	39 66
169	Frank Strong, waiter	12 00
	Chas. Bruce, "	35 33
	Ernest Alexander, dish-washer	8 78
	Walter Goodwin, "	6 93
	Rich'd Mitchell, waiter	41 83
	Wm. Nichols,	25 33
	Abraham Mahoney, waiter	37 66
	Chas. Goodwin, "	40 33
	Frank Tasker, Jr., "	38 00
	Rob't Tanks, "	35 33
	Jos. F. Hoyleman, iceman	16 66
	James Martin, waiter	53 33
	James A. Pinkey, "	50 33
	Alex'r Netter, "	34 00
	Wm. Young, "	38 66
	Chas. D. Hebron, "	32 00
	Louis Washington, waiter	12 66
	Jno. Barringer, 3d waiter	119 99
	Jno. P. Davis, "	37 66
	Beverly Parkins, "	18 00
	Jno. Lewis, "	35 67
	Wm. Jackson, "	18 00
	Frank Beall, "	45 00
	Carlisle Mason, "	54 99
	Archie Marshall, "	36 66
	Henry Washington, coffeeman	60 00
	Henry Young, waiter	53 00
	George Panigord, cl. steam tables	24 50
	Jno. W. Henderson, waiter	31 00
	Edmund Gillam, dish-washer	24 69
170	Joanna Nevels, kitchen girl	30 50
	Phillip Bowling, chicken man	25 99
	Maggie Nevels, kitchen girl	28 50
	Amanda Beck, " "	19 20
	Abram Burrell, dish-washer	26 68
	Charles Girdy, "	29 93
	Rowland Girdy, "	29 93
	Rice Barter, "	32 62
	Isaiah Hawkins, "	23 88
	Edward C. King, "	9 33
	Sam'l D. Richardson, "	17 76
	Jennie Boggs, kitchen girl	21 80
	Fred'k Holmes, cook's help	23 25
	Ellie Finley, iceman	10 75
	Warwick Wright, dish-washer	11 92
	Richard Cornelius, "	10 83
	Lee Ragland, "	4 98
	Rob't Thompson, "	20 80

	Albert Patterson,	dish-washer	$36 40
	James Mayhew,	"	15 16
	Wm. Gillam,	"	26 16
	James Alexander,	"	20 00
	Moses Alexander,	"	29 04
	Sarah Beck,	kitchen girl	4 80
	Claiborne Coleman,	dish-washer	24 65
	Sherman Woodfall,	"	15 33
	Wm. Brown,	"	11 83
	Henry Carter,	"	15 33
	R. H. Hoyleman,	dairy	47 66
	Stephen Rucker,	silverman	3 43
	Albert Clarke,	dish-washer	23 17
171	Squire Perkins,	dish-washer	17 76
	Joe Shorn,	kitchen help	25 20
	Leory Powell,	dish-washer	2 17
	Mary Reed,	kitchen girl	24 80
	Mary Miller,	" "	24 80
	Mrs. Fenton,	" "	15 60
	Liza Bear,	" "	20 00
	Eliza Lane,	" "	14 40
	Laura Shalter,	" "	14 40
	William James,	waiter	47 99
	Wm. H. Smith,	"	36 99
	Frank Mosely,	"	32 32
	James H. Granderson,	"	35 98
	W. P. Shoats,	"	38 99
	Fountain Williams,	"	41 66
	Sam'l Bouldin,	"	41 66
	Augustus Dubois,	"	33 98
	Benj. Wilson,	"	32 66
	Wm. Banks,	"	7 79
	O. Walker,	"	55 33
	W. H. Ross,	"	32 32
	Stephen Robinson,	"	38 99
	James H. Mason,	"	32 66
	J. W. Hill,	"	47 99
	Geo. McGruder,	"	35 32
	Chas. W. Robinson,	"	33 98
	Mathew Johnson,	dish-washer	21 73
	Thos. Stewart,	"	14 52
	Jno. Allen,	"	16 24
	Alex. Banks,	"	30 02
	Frank Fisher,	"	14 52
172	Isaac Hobson,	dish-washer	32 50
	Clem. Young, Jr.,	silverman	6 50
	David Clarke,	silverman	5 42
	Eli Jackson,	"	20 76
	John Houston,	"	9 83
	Wm. Foster,	"	11 66
	Frank Taylor,	"	6 50

Andrew Lewis, silverman		$17 97
Lewis Nightingale, "		9 88
J. C. Spottswood, waiter		15 99
Chas. H. shearer, "		22 66
Rob't Lewis, "		11 08
Chas. H. Brown "		22 33
Edward H. Johnson, "		28 67
Henry P. Smith, "		37 66
James Allen, "		29 60
Wharton Allen, "		14 00
Isaac Kinsley, "		17 00
Wm. Grant, dish-washer		18 63
Campbell Brown, "		1 73
Chas. Ellis, "		1 73
Marshall Lewis, "		6 06
J. S. James, "		9 10
G. Mumick, baker		111 75
Albert Ott, cook		57 75
Gustave Winfield, "		46 75
J. T. Jackson, dish-washer		15 17
Sam'l Ward, "		20 80
Jno. Woodfall, "		13 66
Sam'l Perrin, "		11 41
Ch's H. Davis, dish-washer		4 77
173 James Early, dish-washer		10 83
W. Johnson, "		13 00
R. Chamberlain, waiter		29 00
Chas. Jackson, "		30 66
Silas Ramelsburg, watchman		38 00
Mrs. M. O. Bailey, housekeeper		242 00
Miss Sallie Bass, linen-room		233 33
" Gay, " "		87 60
Lavinia Jackson, chambermaid		34 33
Charlotte Fowler, "		37 99
Laura Holmes, "		38 66
Mat. Clay, "		39 33
Sallie Davenport, "		30 32
Annie Atkinson, "		26 99
May Robinson, "		34 33
Lucy Jefferson, "		34 33
Fanny Lewis, "		26 33
Alia James, "		33 66
Lizzie Holmes, "		48 00
Susie Holmes, scrubber		50 16
Nannie Foster, "		25 16
Belle Steward, "		28 00
Jane Wood, "		27 66
Lizzie Wood, "		9 33
Lucy Carter, "		20 59
Cynthia Carter, "		21 65
Carsline Bowles, "		29 00

	Sallie Jones,	scrubber	$11 32
	Lucy Leftwich,	chambermaid	29 99
	Winnie Brown,	"	27 32
	Louisa Davis,	chambermaid	25 66
174	Bertie Carter,	"	44 32
	Lucy Reynolds,	"	27 82
	Eveline Bowles,	chambermaid	33 99
	Mary Meadows,	"	25 66
	Maria Clarke,	"	42 16
	Julia Twyman,	"	21 50
	Netta Saunders,	"	21 66
	Agnes Jones,	"	21 50
	Nannie Erby,	"	1 00
	Lucy Hopkins,	"	1 60
	Elvina Jackson,	"	31 66
	Julia Hale,	"	20 32
	Harriet Rogers,	"	35 00
	Julia Woodfolk,	"	18 99
	Annie Rollins,	"	23 00
	Martha Hatchett,	"	14 66
	Lucy Gilliam,	"	27 32
	Miss N. G. Bass,	linen-room	25 00
	Nannie Callender,	chambermaid	13 33
	Mattie Brooks,	"	20 33
	Amanda Johnson,	"	28 76
	Harriet Brown,	"	23 66
	Emma Jones,	"	23 33
	Maggie Jamison,	"	30 00
	P. & C. Fay,	sup't's laundry	447 50
	Nellie Barnett,	laundry	65 08
	Jane Morgan,	"	65 08
	Maggie Lilly,	"	48 41
	Sarah Conners,	"	47 78
	N. C. Search,	"	30 66
	Kate Sullivan,	"	63 33
175	Julia Griffin,	laundry	47 74
	Maggie Gaines,	"	32 72
	Louisa James,	"	1 86
	Mary Houston,	"	1 85
	Henrietta Ross,	"	23 99
	Nancy Logan,	"	23 47
	Joe Brown,	"	40 66
	Elisha Jackson,	"	17 50
	Laura Melia,	"	27 66
	Mary Johnson,	"	31 59
	Phoebe Lucas,	"	29 59
	A. Commegs,	"	31 99
	Pauline Coleman,	"	18 59
	Hannah Patrick,	"	33 99
	Lucy Hopper,	"	5 07
	Mary Brown,	"	41 60

Patterson Williams,	laundry		$36 50
Ella Bradley,	"		26 99
Emilia Allen,	"		9 66
Tilly Pira,	"		21 07
Nanny Erby,	"		11 47
Lizzie Jenkins,	"		31 66
Eliza Wiley,	"		24 33
Jennie Mathews,	"		37 00
Jennie Randolph,	"		41 48
Nancy Jackson,	"		17 00
Mary Keiler,	"		3 00
Carrie Taylor,	"		7 66
Henry Johnson,	"		1 60
Grace Massey,	"		2 33
Ellen Bailey,	"		14 13
176 Bettie Mills,	"		1 60
Mary Wiley,	"		20 27
Nana Jones,	"		13 59
Sallie Jones,	"		8 80
Samantha Carter,	"		13 59
Dora Brarton,	"		18 75
Jane woood,	"		1 07
Lucy Hope,	"		10 40
Lizzie Wood,	"		3 20
Alice Moon,	"		9 33
Dolly Robinson,	"		15 60
Sam'l Allen,	"		24 20
Lavinia Cook,	"		20 80
Francis Bradley,	"		20 80
Minerva Johnston,	"		12 80
Betty Scott,	"		12 80
Mary Field,	"		12 80
Pauline Bush,	"		2 13
Newton Young,	"		17 50
E. A. Tinder,	carpenter		418 92
Wm. Burden,	blacksmith		190 87
Thos. Patterson,	gardener		353 30
Jno. Cullen,	laborer		48 66
Sam. Dickson,	"		217 66
Wilson Bunell,	"		162 99
James Harvey,	"		145 63
Wm. Lynch,	watchman		111 67
Frank T. Eagan,	"		243 45
G. W. Lynch,	"		9 16
Noah Tate,	laborer		2 55
Alex. Burks,	laborer		25 99
177 Zac. L. Lewis,	"		195 29
I. H. Brown,	"		51 74
Chas. Dickson,	laborer		187 94
T. I. Lynch,	"		164 73
Thos. Callender,	"		206 48

Isaac Hobson,	laborer	$45 18
Wm. Grant,	"	7 25
Geo. Dickson,	"	207 60
Louis Burrell,	"	161 79
Commodore Ward,	"	101 92
Jerry Alexader,	"	38 24
Wyatt Hobson,	"	14 55
Morgan James,	"	48 39
Wm. Foset,	"	8 20
Harry Houston,	"	49 00
Chas. Wickline,	"	148 32
Tazewell Young,	"	67 05
Harry Spurlock,	"	11 79
C. D. Dickson,	"	20 82
Peter Garland,	"	39 75
Wm. Bell,	"	11 02
T. K. Kerr,	carpenter	173 50
Joe Allen,	laborer	23 75
J. N. Gardner,	carpenter	163 50
Wm. Johnston,	laborer	4 50
Harry Brackman,	carpenter,	12 00
Sam'l Epps,	laborer	3 20
Newton Young,	"	21 41
—— Morton,	"	2 80
Emmett Jones,	"	26 75
	Wm. Johnson, No. 1, laborer	18 05
178	Wm. Dickson, laborer	89 82
	Sam'l King, "	22 12
R. Cornelius,	laborer	2 81
And'w Gibbons,	"	31 25
Floyd Miller,	"	82 75
A. Alestock,	"	62 25
Fred. Holmes,	"	19 74
Tennie Lynch,	painter	15 87
R. I. Satterwhite,	"	8 11
J. W. Gillespie,	"	73 50
Mary Howard,	laundry	3 75
E. F. Wicker,	stables	98 00
Geo. Eddy,	laborer	15 25
I. D. Wickline,	carpenter	126 00
R. B. Gillespie,	"	79 50
S. P. Gillespie,	"	76 50
Phillip Foster,	laborer	11 85
W. Donnelly,	ten-pin alley	13 33
A. I. Jarvis,	laborer	71 25
W. T. Tolley,	carpenter	21 00
L. M. Tolley,	"	20 62
Wm. Baker,	laborer	2 25
James Paul,	"	14 60
Charles Moon,	"	9 25
Sam'l Perrin,	"	22 50

	Jno. Suiber, carpenter		$69 00
	Ed. Dickson, laborer		125 12
	T. M. Wood, watchman		25 00
	Til. Woodfolk, blacksmith		24 00
	Til. Woolfolk, "		20 00
	Clem. Young, laborer		8 85
179	Giles Wood, laborer		68 62
	Nelson Washington, laborer		19 49
	William Jackson, laborer		42 62
	" Lewis, "		80 70
	Albert Anderson, "		20 62
	Elijah Washington "		19 87
	Harrison Bates, "		20 49
	Rob't Johnston, "		20 87
	Wm. Fife, "		80 20
	Ger. Smith, "		170 75
	Thos. H. Troy, "		96 37
	I. H. Eddy, carpenter		11 25
	Horace Hobson, "		64 12
	Geo. W. Eddy, "		76 00
	H. E. Parrell, laborer		43 50
	W. F. Remley, "		46 00
	Rob't Muley, "		46 12
	Frank McClure, "		18 75
	Mathew Johnston, "		10 00
	R. G. Alexander, "		17 00
	Alfred Robinson, "		28 87
	Albert Burke, "		38 12
	Hamilton Smith, "		37 37
	R. J. Hillery, carpenter		65 00
	Geo. L. Watson, mechanic		149 99
	C. E. Getz, electrician		180 00
	J. T. O'Neil, laborer		29 00
	Rob't Allen, "		47 49
	Orner D. Dean, "		12 25
	Albert Blackey, "		24 75
	Thos. Kenney, laborer		65 99
180	Jno. Flack, laborer		57 99
	Harry Leonard, laborer		28 36
	J. C. Carson, laborer		2 25
	Wm. Davis, "		5 60
	James Patterson, "		23 62
	Geo. Houston, "		26 47
	R. Brackman, "		36 75
	Chas. T. Bowers, "		51 00
	Sam'l Collyer, "		5 00
	David Morris, "		3 25
	W. L. Lane, "		13 25
	E. Jackson, "		7 83
	David Clarke, "		2 62
	Joe Shoebe, "		5 87

Chas. Tinder, ten-pin alley		$17 13
Henry Robinson, laborer		10 00
Phillip Woolwine, "		10 00
Jack Lynch, "		54 50
Geo. Williams, "		53 87
James McLaughlin, police		120 00
Joseph Acton, "		104 99
Z. R. Offett, "		96 66
I. H. W. Morris, laborer		59 99
Rufus Shelton, "		27 75
Edgar Dyar, "		28 25
Geo. Boyes and 9 musicians		1,500 00
J. E. Ware		45 75
John Lewis, blacksmith		5 62
Ed. Dickson, ten-pin alley		24 40
Sundry day-laborers		54 15
181 Harrison Phoebus, allowance by court		5,000 00
		$47,534 86
Credit:		
Proportion of wages charged to building and repair ac..		3,029 81
		$44,505 05

Statement of Sundry Supplies Purchased for Use at White Sulphur Springs, W. Va., During the Season of 1883 *by H. Phoebus.*

Store-room bills.

1883.			
May	30. Purcell, Ladd & Co., Richmond, sundries	15 25	
June	1. Stack, Spitler & Co., Staunton, flour	34 50	
	" Brown, Davis & Co., Monroe Co., groceries	259 44	
	4. Brown, Davis & Co., Monroe Co.	25 50	
	" C. S. Peyton, Monroe Co., cattle and sheep	301 00	
	11. Red C Oil Co., Balto., oil	13 57	
	12. Purcell, Ladd & Co., Richmond, sundries	7 00	
	" J. M. Price, Monroe Co., bacon	23 22	
	13. E. F. Dorman & Co., Balto., vegetables	54 85	
	" Acker, Merrill & Condit, New York, groceries	830 79	
	" Eakle & Jones, Staunton, eggs, &c.	39 05	
	14. E. T. Dorman & Co., Balto., fish, &c.	7 86	
	" C. C. & L. A. Nickell, Monroe Co., meal	8 70	
	16. L. Powers, Richmond, vegetables	3 84	

1883.			
June	16.	J. M. Price, Monroe Co., bacon	39 61
	"	J. H. Signiago, Richmond, fruit, &c.	15 00
182	18.	L. Powers, Richmond, vegetables	17 05
	"	Do., " "	2 00
	"	Eakle & Jones, Staunton, eggs, &c.	24 50
	19.	" " "	32 50
	"	L. Powers, Richmond, vegetables	9 50
	20.	T. D. Daley, Washington, butter	56 16
	"	J. S. Suiber, White Sul. Sp'gs, groceries	9 10
	21.	Jno. F. Garing, White Sul. Sp'gs, groceries	19 32
	"	Dinsmore & Kyle, Balto., groceries	3,606 84
	"	Brown, Davis & Co., Richmond, groceries	111 04
	"	Worster & Adamson, Washington, vegetables	12 65
	22.	C. S. Peyton, Monroe, cattle	56 65
	"	J. G. Hayden, Lewisburg, beef, mutton, &c.	391 43
	"	L. Powers, Richmond, vegetables	4 50
	"	Do., " "	4 50
	23.	Dinsmore & Kyle, Balto., groceries	286 77
	24.	Hygeia hotel, Old Point, fish	45 05
	25.	Baker & Clarke, New York, hams, &c.	487 74
	"	Worster & Adams, Washington, vegetables	30 75
	"	Powers, Taylor & Co., Richmond, groceries	12 21
	"	Brown, Davis & Co., Richmond, groceries	6 75
	"	Jno. W. D. Pentz & Co., Balto., beef	226 63
	"	McMenamin & Son, Hampton, crab meat	56 00
	"	V. Heckler, Jr., & Bros., Richmond, hams	115 00
	"	Worster & Adams, Washington, vegetables	15 00
	26.	E. T. Dorman & Co., Balto., fish, &c.	28 80
	"	J. W. D. Pentz & Son, " beef	141 76
	"	Worster & Adams, Washington, vegetables	3 75
	27.	Worster & Adams, Washington, vegetables	5 00
	28.	Taliaferro & Co., Richmond, vegetables	28 45
	"	Hygeia hotel, Old Point, fish	2 00
183	June 28.	W. J. Johnson & Co., Richmond, groceries	31 00

1883.

June	29.	Dinsmore & Kyle, Balto., groceries	38 28
	"	Worster & Adams, Washington, vegetables	21 25
	30.	Brown, Davis & Co., Richmond, groceries	27 20
	"	Dinsmore & Kyle, Balto., groceries	61 17
July	2.	Worster & Adams, Washington, vegetables	27 20
	"	Jno. Van & Co., vegetables	10 00
	"	Dinsmore & Kyle, Balto., groceries	6 25
	"	Worster & Adams, Washington, vegetables	19 30
	"	Worster & Adams, Washington, vegetables	4 50
	3.	J. W. D. Pentz & Co., Balto., beef	39 24
	"	S. Straight & Co., Hudson, butter	123 28
	"	Hygeia hotel, fish	13 67
	"	C. S. Peyton, cattle	636 16
	4.	Hygeia hotel, fish	11 05
	5.	Worster & Adams	17 80
	"	Fleishman & Co., yeast	12 25
	"	J. W. D. Pentz & Co., beef	67 55
	6.	" " " "	57 66
	"	Hygeia hotel, fish	1 50
	7.	" " "	16 60
	"	Worster & Adams	67 70
	9.	Do. do.	32 77
	"	Do. do.	53 34
	10.	Hygeia hotel, fish	15 70
	11.	Do., "	16 90
	"	Jno. W. D. Pentz & Co., beef	123 46
	"	W. Prince, eggs, &c.	15 60
	"	T. M. Truslow, "	7 68
	"	C. S. Peyton, cattle, sheep	975 09
	12.	Hygeia hotel, fish	12 27
184	12.	Worster & Adams, vegetables	16 00
	"	Oakley & Keating, sundries	2 55
	"	J. O. Dickinson & Co., salt	30 00
	"	Jno. W. D. Pentz & Co., beef	47 88
	14.	Worster & Adams	31 50
	"	Coleman & Jarboe, fruit	24 00
	"	Hygeia hotel, fish	21 72
	16.	Eakle & Jones, chickens, &c.	30 50
	"	Worster & Adams	125 86
	"	Jno. W. D. Pentz & Co., beef	188 00
	"	S. Straight & Co., butter	45 54
	13.	Worster & Adams	38 70
	17.	Eakle & Jones	76 50
	"	Jno. W. D. Pentz & Co., beef	95 48
	"	Hygeia hotel, fish	33 04

1883.

July	17.	S. Straight & Co., butter	232	32
	"	Dinsmore & Kyle, groceries	57	00
	18.	Worster & Adams	16	50
	"	Purcell, Ladd & Co.	287	44
	"	C. S. Peyton, cattle	1,133	32
	19.	Worster & Adams	11	25
	"	Hygeia hotel, fish	26	62
	"	Dinsmore & Kyle, groceries	55	30
	20.	" " "	47	34
	"	Worster & Adams	155	77
	21.	" "	120	44
	"	Hygeia hotel, fish	10	85
	"	W. J. Johnson & Co., groceries	31	20
	"	Jno. W. D. Pentz & Co., beef	408	31
	"	Chas. L. Todd, flour	18	90
	23.	Worster & Adams, veg., &c.	17	50
185	July 23.	J. H. Signiago, fruit	32	00
	"	Jno. W. D. Pentz & Co., beef	181	02
July	24.	Jno. W. D. Pentz & Co., "	159	71
	"	Hygeia hotel, fish	29	15
	"	S. Straight & Co., butter	231	44
	25.	C. S. Peyton, beeves & sheep	1,103	04
	"	Purcell, Ladd & Co., groceries (?)	14	40
	"	Jno. W. D. Pentz & Co., beef	164	70
	"	Dinsmore & Kyle, groceries	492	49
	"	Powers, Taylor & Co., groceries	82	50
	26.	V. Heckler, Jr., & Bros., hams, &c.	231	42
	"	Worster & Adams	5	00
	"	Hygeia hotel, fish	28	33
	27.	" " "	1	50
	"	J. H. Signaigo, fruit	45	50
	"	Worster & Adams, veg.	17	58
	"	V. Heckler, Jr., & Bros., hams, &c.	43	31
	"	Jno. W. D. Pentz & Co., beef	10	44
	28.	" " "	478	99
	"	J. H. Signaigo, fruit	13	00
	"	Worster & Adams	189	65
	"	Hygeia hotel, fish	31	74
	"	Eakle & Jones, chickens, &c.	100	80
	"	A. & E. Robins, "	41	62
	"	Dinsmore & Kyle, groceries	40	00
	30.	Baker & Clarke, hams, &c.	42	26
	"	Dinsmore & Kyle	15	00
	"	Eakle & Jones, eggs, &c.	16	80
	"	Worster & Adams	16	25
	"	A. "E." Huddleston, eggs, &c.	11	25
186	July 31.	Eakle & Jones, eggs, &c.	25	50
	"	A. E. Huddleston, "	10	00
July	31.	J. H. Signaigo, fruit	20	00
	"	J. W. Porter, "	15	25

1883.

July	31.	Hygeia hotel, fish	22 67
	24.	Worster & Adams, vegetables	32 70
	26.	" " "	68 07
	31.	Wm. F. Mun, cream	80 00
	"	C. Woolnough, fruit	13 50
	"	S. Straight & Co., butter	342 76
	"	Davenport & Morris, groceries	458 24
	"	S. E. Egeston & Co., flour	975 00
Aug.	1.	Hygeia hotel, fish	43 77
	"	Worster & Adams, veg.	86 07
	"	J. H. Signaigo, fruit	30 75
	"	Fleishman & Co., yeast	31 15
	2.	Alex. Robinson, fruit	30 25
	"	Mrs. C. R. Randolph, fruit	56 00
	1.	Dinsmore & Kyle, groceries	644 73
	2.	J. H. Signaigo, fruit	23 00
	"	Davenport & Morris, groceries	22 08
	"	Jno. W. D. Pentz, beef	442 38
	3.	J. W. Porter, fruit	19 00
	"	Dinsmore & Kyle, groceries	164 06
	4.	Worster & Adams, vegetables	97 95
	"	Jno. W. D. Pentz & Co., beef	264 31
	"	Eakle & Jones, chickens, &c.	234 00
	"	Hygeia hotel, fish	30 24
	"	Davenport & Morris, groceries	27 00
	"	Dinsmore & Kyle, "	161 97
187	Aug. 3.	J. H. Signaigo, fruit	4 50
	"	Hygeia hotel, fish	1 25
Aug.	2.	Hygeia hotel, fish	38 04
	"	Dinsmore & Kyle, groceries	32 75
	"	Worster & Adams, vegetables, &c.	37 95
	3.	" " "	75 25
	"	Hygeia hotel, fish	19 31
	6.	" " "	32 49
	"	J. H. Signaigo, fruit	52 50
	"	J. W. Porter, fruit	16 00
	"	Worster & Adams, fruit	43 00
	"	Jno. W. D. Pentz & Co., beef	481 61
	"	Colgate & Co., soap	9 50
	7.	V. Heckler, Jr., & Bros., hams, &c.	74 63
	"	S. Straight & Co., butter	328 23
	8.	Davenport & Morris, groceries	536 95
	"	C. S. Peyton, cattle	340 16
	"	Jno. W. D. Pentz & Co., beef	493 08
	7.	Hygeia hotel, fish	34 77
	"	Alex. Robinson, fruit	18 25
	"	G. W. Porter, fruit	4 00
	"	Worster & Adams, fruit	13 00
	"	Dinsmore & Kyle, groceries	47 04
	8.	Hygeia hotel, fish	28 62

1883.

Aug.	8.	Alex'r Robinson, fruit	7 00
	"	Miss C. R. Randolph, fruit	7 50
	9.	Eakle & Jones, chickens, eggs	67 50
		A. E. Huddleston, chickens, eggs	10 25
	"	Worster & Adams, fruits	196 10
	"	Eakle & Jones, chickens, &c.	55 00
	"	J. W. D. Pentz & Co., beef	177 60
188	Aug. 9,	Hygeia Hotel, fish	25 41
	"	Davenport & Morris, groceries	16 65
Aug.	9.	" " "	482 40
	"	Dinsmore & Kyle, "	711 55
	"	E. T. Dorman & Co., fish	34 50
	"	V. Heckler, Jr., & Bro., hams, &c.	347 91
	"	J. W. Porter, fruit	34 75
	"	Alex. Robinson, "	5 50
	"	Colgate & Co., soap	47 50
	10.	Worster & Adams, fruit	108 35
	"	Eakle & Jones, chickens, &c.	117 50
	"	A. C. Bruce & Co., "	1 75
	"	A. Robinson, fruit	7 00
	"	Oliver & Sheldon, fruit	30 00
	"	Jno. W. D. Pentz & Co., beef	307 45
	"	Hygeia hotel, fish	10 58
	"	Davenport & Morris, groceries	15 96
	"	Wilson, Palmer & Co., flour	911 50
	"	Artig. Chem. Disinfecting Co., disinfectant	33 33
	11.	R. O. Shoemaker & Co., blue	5 04
	"	Worster & Adams, fruit	133 92
	"	Jno. W. D. Pentz & Co., beef	433 07
	"	Hygeia hotel, fish	12 24
	"	Davenport & Morris, groceries	223 63
	13.	Dunbar Sons, shrimps	82 08
	"	C. Woolrough, fruit	11 50
	"	Alex. Robinson, "	11 75
	"	Worster & Adams, "	65 00
	"	Wilson, Palmer & Co., flour	146 50
	"	Hygeia hotel, fish	15 33
	"	Davenport & Morris, groceries	82 88
189	Aug. 13.	Eakle & Jones, eggs, &c.	32 50
	"	Jno. W. D. Pentz & Co., beef	380 75
Aug.	13.	Dinsmore & Kyle, groceries	122 13
	14.	" " "	55 00
	"	Eakle & Jones, eggs, &c.	173 05
	"	Alex. Robinson, fruit	20 00
	"	Worster & Adams, veg., &c.	44 90
	"	Hygeia hotel, fish	20 67
	15	" " "	20 24
	"	Worster & Adams, fruit, &c.	67 45
	"	Eakle & Jones, chickens, &c.	78 90

1883.

Aug.	15.	E. T. Dorman & Co., fish, &c.	122	34
	"	Wm. Otterman & Co., beef	495	36
	"	Eakle & Jones, eggs, &c.		50
	16.	Worster & Adams, veg., &c	80	80
	"	Hygeia hotel, fish	14	83
	"	A. E. Huddleston, eggs, &c.	5	84
	"	Davenport & Morris, groceries	364	25
	"	Eakle & Jones, eggs, &c.	13	50
	"	Jno. W. D. Pentz & Co., beef	400	66
	17.	A. C. Bruce & Co., eggs	1	50
	"	Alex. Robinson, fruit	14	00
	"	Hygeia hotel, fish	43	60
	"	Davenport & Morris, groceries	83	85
	"	Jno. W. D. Pentz & Co., beef	144	97
	"	Worster & Adams, veg., &c.	106	85
	"	Eakle & Jones, eggs, &c.	66	00
	"	" " chickens, eggs, &c.	62	29
	"	Dinsmore & Kyle, groceries	819	25
	18.	Worster & Adams, fruit	1	50
	"	Jno. W. D. Pentz & Co., beef	449	82
190	Aug.	18. Eakle & Jones, chickens, &c.	81	83
		" Davenport & Morris, groceries	24	00
Aug.	18.	" " "	626	34
	"	Alex. Robinson, fruit	10	00
	"	Hygeia hotel, fish	49	12
	"	A. E. Huddleston, eggs, &c.	3	75
	"	Eakle & Jones, chickens, &c.	177	25
	"	E. T. Dorman & Co., fish, &c.	142	07
	"	W. Prince, fruit	12	50
	20.	Worster & Adams, veg., &c.	173	62
	"	Jno. W. D. Pentz & Co., beef	389	05
	"	Eakle & Jones, eggs, &c.	7	65
	"	Hygeia hotel, fish	49	45
	"	Dinsmore & Kyle, groceries	15	00
	"	Alex. Robinson, fruit	32	60
	21.	Worster & Adams, fruit, &c.	31	24
	"	Jno. W. D. Pentz & Co., beef	458	05
	"	S. Straight & Co., butter	218	19
	22.	C. S. Peyton, cattle	1,234	96
	23.	Worster & Adams, veg.	65	39
	"	Eakle & Jones, chickens	270	00
	"	S. E. Egerton & Co., groceries	108	00
	"	Dinsmore & Kyle, "	66	87
	24.	Jno. W. D. Pentz & Co., beef	248	12
	"	Eakle & Jones, eggs, &c.	12	00
	"	Dinsmore & Kyle, groceries	449	26
	"	V. Heckler, Jr., & Bro., hams, &c.	397	26
	"	Davenport & Morris, groceries	29	85
	"	Worster & Adams, veg., fruit, &c.	160	25

1883.

Aug.	25.	Worster & Adams, veg., fruit, &c.	147 55
	"	Jno W. D. Pentz & Co., beef	113 74
191	Aug. 25.	V. Heckler, Jr., & Bro., hams, &c.	45 88
	"	E. D. Dorman & Co, fish, &c.	72 20
Aug.	25.	Davenport & Morris, groceries	29 00
	27.	Jno. W. D. Pentz & Co., beef	289 02
	"	Worster & Adams, fruit, veg., &c.	54 50
	28.	Wm. Dinwiddie, " " "	15 00
	"	Alx. Robinson, " " "	11 20
	"	Worster & Adams, " " "	17 50
	"	Dinsmore & Kyle, groceries	192 48
	"	Davenport & Morris, "	54 25
	"	S. Straight & Co., butter	132 09
	"	Jno. W. D. Pentz & Co., beef	68 04
	29.	J. W. Porter, fruit	131 50
	30.	E. T. Dorman & Co., fish	113 23
	"	Worster & Adams, vegetables, &c.	27 52
	"	Jno. W. D. Pentz & Co., beef	320 82
	"	C. S. Peyton, sheep	202 57
	31.	Worster & Adams, veg. & fruit	26 25
	"	Davenport & Morris, groceries	43 08
	"	Jno. W. D. Pentz & Co., beef	186 09
Sept.	1.	W. F. Muir, cream	520 00
	"	E. T. Dorman & Co., fish, &c.	45 00
	"	Fleishmann & Co., yeast	65 00
	"	Wm. Dinwiddie, Jr., fruit	10 00
	3.	Worster & Adams, " &c.	76 81
	"	Jno. W. D. Pentz & Co., beef	231 89
	4.	Worster & Adams, veg.	7 50
		S. Straight & Co., butter	157 75
	4.	Jno. W. D. Pentz & Co., beef	282 40
	5.	Mrs. G. L. Peyton, tomatoes	54 00
	"	Henry S. Lyman, "	8 00
192	Sept. 5.	J. W. Porter, fruit	51 00
	"	Wm. Dinwiddie, Jr., fruit	10 00
Sept.	6.	Eakle & Jones, eggs, &c.	75 60
	7.	" " "	16 20
	"	Worster & Adams, veg., &c.	48 75
	"	E. T. Dorman & Co., fish, &c.	43 50
	"	Hygeia hotel, fish	12 50
	"	Jno. W. D. Pentz & Co., beef	276 70
	8.	Worster & Adams, veg., &c.	8 00
	10.	Hygeia hotel, fish	4 20
	11.	Eakle & Jones, eggs, &c.	32 40
	12.	" " "	55 64
	"	E. T. Dorman & Co., fish, &c.	20 00
	13.	Alex. Robinson, fruit	74 75
	"	Wm. Dinwiddie, Jr., fruit	10 00
	"	Eakle & Jones, eggs, &c.	30 00
	14.	" " "	12 00

1883.				
Sept.	15.	Fleishmann & Co., yeast	21 70	
	"	Wm. Dinwiddie, Jr., yeast	9 50	
	13.	Jno. W. D. Pentz & Co., beef	275 72	
	15.	" " " "	54 31	
	17.	Eakle & Jones, veg., eggs, &c.	85 80	
	"	J. S. Suiber, rice	2 00	
	18.	Worster & Adams, veg., &c.	33 20	
	"	Jno. W. D. Pentz & Co., beef	83 04	
	"	Davenport & Morris, groceries	11 75	
	20.	J. J. Alexander, fruit, &c.	32 75	
	"	Eakle & Jones, veg., &c.	37 50	
	"	Jno. W. D. Pentz & Co., beef	96 93	
	21.	Wm. Dinwiddie, Jr., fruit	10 00	
	"	Eakle & Jones, bacon, eggs, &c.	50 13	
193	Sept.	22. Eakle & Jones, eggs, &c.	29 00	
	22.	J. S. Suiber, rice	2 25	
	25.	Eakle & Jones, groceries	53 56	
	27.	" " "	57 29	
	"	C. S. Peyton, sheep	56 52	
	28.	Eakle & Jones, groceries, &c.	27 60	
	"	Wm. Dinwiddie, Jr., fruit	10 00	
	29.	Eakle & Jones, eggs, &c.	7 00	
	"	Keen	31 00	
Oct.	1.	Eakle & Jones, eggs, &c.	3 50	
	"	J. H. Signaigo, vegetables	2 50	
				$45,097 70
		Less credit for returned goods:		
July	14.	Dinsmore & Kyle	3 31	
	26.	L. Powers	4 50	
	31.	Davenport & Morris	5 19	
Aug.	29.	" "	32 26	
Sep.	17.	" "	238 15	
				$283 41
				$44,814 29

Itemized Statement of Expense Account, White Sulphur Springs, W. Va., Season 1883.

1883.			
Jan'y	2.	Board for Talkenburg	$33 00
	"	Postage stamps	51
	11.	J. A. Harold's bill for detective work	32 50
	Feb.	2. Paper tags and sundries	60
194	Feb.	17. Postage	25
	Mar.	1. Postage	35
Mar.	13.	Postage	2 67
May	10.	" telegrams, sundries	23 88
	11.	Watkins, Cottrell & Co.	3 06

1883.			
June	1.	Tower Manufacturing Co., blank books	11 09
	2.	West, Johnston & Co., stationery	13 05
	4.	Watkins, Cottrell & Co., sundries	9 60
	5.	Tower Manf'g Co., blank books,	1 75
	"	Freight bills & postage	64 60
	6.	West, Johnston & Co., stationery	13 50
	"	Watkins, Cottrell & Co., sundries	10 00
	7.	West, Johnston & Co., stationery	8 82
	11.	Watkins, Cottrell & Co., sundries	8 00
	12.	Tower Manf'g Co.	5 50
	"	West, Johnston & Co., stationery	22 00
	13.	" " " "	13 30
	14.	" " " "	26 45
	15.	" " " "	4 00
	16.	Freight & express bills	240 27
	18.	License for bar	25 00
	"	Express	20
	"	West, Johnston & Co., stationery	14 85
	19.	J. W. Randolph & English "	42 20
	20.	Watkins, Cottrell & Co., sundries	9 90
	"	West, Johnston & Co., stationery	46 40
	"	Telegrams	1 15
	"	Do. & stamps	9 50
	"	Freight & express bills	158 68
	22.	West, Johnston & Co.	38 25
	"	Sam'l Raynor & Co.	96 00
195	June 23.	Freight bills	116 68
	26.	Refunded Miss Barber	50
June	26.	West, Johnston & Co.	26 00
	27.	Refunded C. S. Peyton	1 00
	28.	Watkins, Cottrell & Co.	5 75
	"	Registered letter	13
	29.	West, Johnston & Co.	22 00
	30.	Watkins, Cottrell & Co.	2 10
	"	Norman School Steam Press, printing	10 50
	"	Postage stamps	7 45
July	3.	Telegram	45
	"	Needles & cotton	50
	"	Express bills	129 40
	"	West, Johnston & Co.	13 10
	"	Purcell, Ladd & Co.	1 75
	4.	Telegram	90
	5.	Watkins, Cottrell & Co.	5 75
	"	Telegram	75
	"	Freight bills	257 71
	6.	Telegrams	11 50
	"	Board for Hennessey & Smith	9 00
	8.	Telegram	1 15

1883.				
July	8.	Collyer & Leonard's fare	30	00
	10.	Express bills	115	35
	11.	Telegram		85
	12.	"		60
	"	Express		75
	"	Freight bills	61	34
	14.	First National bank for collection		99
	16.	Watkins, Cottrell & Co.	5	75
	17.	Telegram		50
196	July 18.	Bath tickets refunded	2	50
	"	Express bills	140	80
July	18.	West, Johnston & Co.	2	60
	22.	First Nat'l Bank of Balto., for collection		25
	24.	Freight bills	130	91
	"	A. Hoehn & Co., check book	11	00
	25.	Head Waiter Randolph's expenses	35	15
	"	2nd cook and 2nd frying cook's expenses	49	94
	26.	Express bills	340	85
	"	First Nat'l b'k, for collection		75
	27.	Eakle & Jones, fares for laundry girls	5	75
	30.	Noah Walker & Co., suits for bell-boys	290	00
Aug.	1.	First Nat. bank, for collection		60
	3.	Postage stamps & cards	26	75
	"	West, Johnston & Co.	3	50
	4.	First Nat. b'k, for collection	1	25
	"	Telegrams		40
	"	Express bills	459	35
	6.	Freight "	320	79
	"	Telegrams	1	13
	7.	Bath tickets refunded	1	60
	8.	First Nat. bank, for collection		72
	9.	Telegrams	1	05
	"	First Nat. b'k, collection		35
	"	West, Johnston & Co.	8	65
	10.	First Nat. b'k, collection		66
	11.	" " "	1	00
	"	Telegram		65
	12.	"	1	00
	13.	Express bills	590	75
	"	J. C. Alderson, insurance premium	4,442	50
197	Aug. 13.	First Nat. bank, collection	4	43
	14.	West, Johnston & Co.	2	25
Aug.	14.	Telegrams		75
	"	Transportation 53 waiters, Phila. to Balto.	53	00
	15.	Bath tickets refunded	1	35

1883.				
Aug.	15.	West, Johnston & Co.	1	90
	16.	Telegrams		75
	17.	"		30
	18.	"		60
	20.	Express bills	773	50
	21.	Telegram		40
	22.	Fare for Michael Baker	16	50
	"	Cameron, Amberg & Co., files for invoices	11	25
	"	Robinson, Parker & Co., tickets for waiters	308	00
	25.	License for ten-pin alley	58	50
	"	" " billiards	93	50
	"	Express bills	647	85
	"	Fixing well (?)		25
	"	Freight bills	551	36
	28.	Board refunded Lee family	25	00
	"	Express for Madden's tools	1	75
	29.	Board refunded for Wenckle	2	00
	"	W. E. Burdick's fare and expenses	50	41
	30.	First Nat. bank, collections	16	72
	"	West, Johnston & Co.	2	70
	"	Balto. & Ohio R. R. Co., transp'n waiters	134	40
	"	C. & O. R. R., transp'n waiters	305	00
	"	Telegrams	1	67
Sep.	2.	"	1	10
	3.	Rider, for meals	1	25
198 Sep.	3.	West, Johnston & Co.		80
	4.	Dr. Moorman, for copyright	150	00
Sep.	4.	Express bills	594	45
	5.	Bath tickets refunded	3	60
	"	Postage stamps	9	00
	"	Southern Bell Telegraph & Telephone Co.	133	50
	7.	Refunded Carroll for overcharge	2	00
	"	Telegram		70
	8.	J. C. Alderson, insurance premium	85	00
	"	A. Hoen & Co.	21	00
	"	West, Johnston & Co.	4	25
	10.	Col. Tabb, legal services	250	00
	"	Lewisburg bank, collection	1	00
	"	Telegram		77
	11.	Freight bills	170	49
	"	Express bills	252	15
	"	Freight bills	18	03
	12.	Telegram	1	00
	14.	Lewisberg b'k, collection	3	70
	17.	Harlow's bill for printing	132	50
	18.	Express bills	83	85

1883.				
Sep.	24.	Express bills	50 70	
	27.	Falkenberg's trip to W. S.	79 89	
	"	1,000-mile tickets & fares p'd for employees	1,966 50	
	"	Hacks, telegrams, & sundries	17 37	
	"	Insurance on stables	51 30	
	"	Sheriff, for taxes	1,026 00	
	"	Geo. F. Pearson, plan for new hotel	15 00	
	"	Am. Bank Note Co., engraving	314 64	
	28.	Telegram	80	
	29.	Normal School Steam Press, printing	5 25	
199 Sep.	30.	First National bank, collection	21 74	
	24.	Jno. F. Garing	21 89	
Oct.	1.	Postage stamps	16 15	
	"	Lewisburg bank, collection	1 45	
	4.	Freight bills	42 82	
	"	Express bills	17 25	
	5.	Telegrams	50	
	6.	Postage	26	
	10.	"	1 00	
	11.	A. F. Matthews, rent of Dry creek	500 00	
	12.	Postage	1 00	
	"	Wilson, Palmer & Co., diff. in freight on flour	21 00	
	"	Moss Engraving Co., lithographing	835 97	
	"	J. W. Randolph & English	35 30	
	18.	Freight & express bills	24 99	
	31.	First Nat. bank, collection	3 51	
	"	James Ware, expense moving from Newark	162 20	
	"	Registered letter	20	
Nov.	1.	Postage stamps	50	
	9.	Old Dominion S. S. Co., for transportation	33 00	
	"	H. Phoebus, bill for personal expenses	161 90	
	"	Freight on blankets to Old Point	9 36	
	"	P'd for one pair blankets lost from White, belonging to Hygeia	6 75	
				$19,116 65
		Credit:		
Freight and express for bar				331 80
				$18,784 85

Expenses	$3,868 53
Transp'n employees	2,821 80
Licenses and taxes	1,203 00
Freight & express (for store-room)	6,312 72
Insurance	4,578 80
	$18,784 85

200 *Itemized Statement of Bar Bills, White Sulphur Springs, Season 1883.*

1883.			
June	4.	W. F. Walker & Co.	479 82
	28.	W. F. Johnson & Co.	822 00
July	2.	W. F. Walker & Co.	50 50
	5.	Jas. B. Winter	12 00
	6.	Do.	18 00
	"	Courtney, Fariall & Co.	383 55
	10.	Oscar Cranz	94 90
	11.	Clarence M. Roof	2,020 25
	12.	Courtney, Fariall & Co.	18 50
	14.	J. B. Winter	18 00
	16.	W. J. Johnson & Co.	227 13
	"	Clarence M. Roof	42 00
	"	Do.	9 50
	17.	Christian & White	27 00
	21.	J. B. Winter	18 00
	25.	Do.	24 00
	31.	Do.	1 50
	"	Davenport & Morris	73 50
Aug.	1.	J. B. Winter	24 00
	2.	Outerbridge Horsey	400 76
	4.	Oscar Cranz	170 10
	6.	J. B. Winter	9 00
	7.	Do.	9 00
	8.	Christian & White	21 00
	9.	J. B. Winter	24 00
	10.	Oscar Cranz	221 55
	11.	Do.	417 05
	14.	Do.	88 00
201	Aug. 14.	J. B. Winter	24 30
	16.	Oscar Cranz	599 20
Aug.	16.	J. B. Winter	24 00
	18.	Oscar Cranz	416 00
	20.	Do.	218 80
	21.	J. B. Winter	24 00
	22.	Oscar Cranz	13 75
	24.	J. B. Winter	24 00
	"	Oscar Cranz	254 30
	25.	Christian & White	27 60
	29.	J. B. Winter	24 20
	30.	Oscar Cranz	4 75

1883.				
Sept.	1.	J. B. Winter	12 00	
	3.	Do.	6 00	
	6.	Do.	18 00	
	10.	Do.	18 00	
	27.	Do.	42 40	
		Freight bills	318 10	
				$7,794 01
		Less credit for goods returned to W. J. Johnson & Co.		272 25
				$7,521 76

202 *Itemized Statement for Farm & Livery Expenditures, White Sulphur Springs, Season* 1883.

1883.			
Jan'y	2.	P. B. Buell, corn	6 75
	12.	Do. "	22 50
	19.	R. D. Erwin, "	30 00
	31.	Do. "	30 00
Feb.	9.	Brown, shoeing horses	2 20
	13.	Watkins, Cottrell & Co., harness	24 25
	24.	McPherson & Buell, hay	90 00
	28.	J. M. Price, corn	45 00
Mar.	12.	Buell & Henderson, hay & corn	60 00
	13.	Freight bills	3 85
	17.	Peter Henderson & Co., seed	25 23
	27.	Jno. Holly & Suiber, hay	72 50
	"	Wilson & Tuckwiller, "	100 45
	"	P. B. Buell, wintering cat.	162 00
Ap'l	26.	Freight bills & Farroll for corn	22 81
	30.	Watkins & Cottrell, harness	27 75
May	1.	Smith, Dean & Holly, hay & corn	58 00
	29.	B. F. Stockton, iron-work	9 50
June	1.	Watkins, Cottrell & Co., hardware	3 75
	5.	Wilson & Tuckwiller, hay	30 00
	"	C. C. & L. A. Nichols, feed	70 67
	21.	Freight bills	1 67
	18.	P. B. Buell, feed & corn	50
	"	A. E. White, hardware	2 55
	"	C. C. & L. A. Nichols, chop.	45 91
	25.	A. E. White, hardware	5 45
	26.	Geo. Ainslie & Sons, whips	3 65
	"	E. F. Wicker, hogs	98 35
203	July	2. E. F. Wicker, hogs	228 37
		3. Freight bills	25
July	5.	A. E. White, hardware	1 50
	"	J. M. Miller, corn	45 00
	"	Jno. H. Williams & Co., hardware	9 30
	11.	Geo. A. Ainslie & Sons, rep. carriages	548 65

1883.

July	11.	E. F. Wicker, hogs	218 25
	12.	Refunded for livery	2 00
	"	Freight bills	61 80
	"	Halstead Bros., corn	16 81
	13.	Kleinfelder Bros., bags	24 00
	14	C. C. & L. A. Nichols, feed	54 96
	17.	Halstead Bros., corn	3 00
	18.	P. B. Buell, corn	48 87
	"	Geo. R. King, tarpaulins	47 00
	19.	Horseshoe nails	40
	"	Sinks Grove Co., oats	25 90
	20.	Refunded for livery	25
	23.	Freight bills	49 50
	24.	Halstead Bros., corn	18 00
	"	A. E. White, hardware	1 50
	25.	Horseshoe nails	50
	"	S. S. Cottrell & Co., hardware	17 42
	26.	Freight bills	2 25
	28.	Peter Henderson & Co., paper, &c.	15 38
Aug.	2.	Watkins, Cottrell & Co., hardware	18 75
	3.	C. C. & L. A. Nichols, feed	43 56
	4.	J. M. Miller, corn	55 80
	"	Freight bills	1 30
	6.	Do.	5 65
	"	Wm. White, oats & corn	20 18
204	Aug. 7.	A. E. White, hardware	7 00
		8. E. T. Wicker, hogs	355 50
Aug.	8.	Paid for outside livery	16 00
	9.	Refunded for do.	50
	"	T. H. Ellett, oats and corn	331 22
	14.	Refunded for livery	1 50
	16.	Do. do.	3 00
	"	John Luvis, shoeing horses	62
	18.	R. D. Ervin, corn	35 45
	19.	Paid for outside livery	10 00
	22.	" " "	22 00
	24.	Refunded for "	1 00
	25.	Do. do.	50
	"	Freight bills	40 75
	30.	Paid for outside livery	14 00
	31.	T. H. Ellett, oats and corn	245 38
Sep.	1.	Refunded for livery	2 50
	5.	" "	2 25
	7.	" "	50
	11.	Freight bills	37 20
	15.	C. H. Dickson, feed	32 64
	25.	Robinson, rep. harness	1 20
	27.	W. A. Stuart, 23 cows	1,097 50
	"	W. F. Patton, oats	66 59
	"	G. A. Ainslee & Sons	144 00

1883.

Oct.	10.	Brown, blacksmith work	2 80	
	31.	James Ware, 1 carriage	150 00	
	"	Do. 1 set harness	20 00	
	"	G. M. Lickliter, blacksmith work	50	
Sep.	17.	S. A. Houston, oats	15 15	
				$5,298 64
		Less credit for goods returned to A. E. White		6 20
205		For goods returned (or't forward)		6 20
				$5,292 44

Itemized Statement of Coal & Gasoline Bills, White Sulphur Springs, Season 1883.

1883.

July	10.	Tough, Rutherford & Co., gasoline	6 55	
June	4.	W. R. Johnson, coal	24 43	
	9.	Tough, Rutherford & Co., gasoline	222 30	
	6.	Do. do. "	30 54	
	29.	M. Erskine Miller, coal	52 43	
July	6.	Do. do. "	22 23	
	19.	Tough, Rutherford & Co., gasoline	110 85	
	20.	Augustine, Harwood & Watkins, gasoline	77 00	
	23.	M. Erskine Miller, coal	43 93	
	25.	Tough, Rutherford & Co., gasoline	212 35	
	27.	M. Erskine Miller, coal	50 66	
	31.	Do. do. "	44 60	
	"	Tough, Rutherford & Co., gasoline	87 20	
Aug.	4.	M. Erskine Miller, coal	39 64	
	6.	W. R. Johnson, "	26 51	
	7.	Wm. Berry & Cooper, coal	11 00	
	9.	Tough, Rutherford & Co., gasoline	100 65	
	11.	Do. do. "	202 35	
	20.	M. Erskine Miller, coal	178 02	
Sep.	10.	W. R. Johnson, "	21 87	
	17.	M. Erskine Miller "	66 70	
	"	Tough, Rutherford & Co., gasoline	61 40	
Oct.	6.	M. Erskine Miller, coal	25 31	
				$1,718 52

206 *Itemized Statement of Advertising Bills, White Sulphur Springs, Season* 1883.

1883.

June	2.	National Republican	18 67
	"	N. Y. Commercial Advertiser	5 25
	3.	Richmond Dispatch	19 50
	"	Balto. American	40 00
	4.	Louisville Democrat	8 00
	"	St. Louis Globe Democrat	39 60

1883.			
June	4.	Baltimore Sun	43 20
	6.	Constitution Publishing Co.	14 00
	7.	Missouri Republican	29 38
	9.	N. Y. Commercial Advertiser	26 00
	10.	Cinn. Com. Adv. Gazette Co.	36 75
	"	Washington Evening Star	17 50
	11.	N. Y. Evening Post	37 50
	12.	Harper Bros.	24 00
	"	Courier Journal Co.	40 88
	16.	Baltimorean	20 00
	19.	Memphis Appeal	7 50
	21.	Religious Herald	13 00
	25.	Zephyrs	125 00
	26.	The Independent	11 25
	27.	Petersburg Index-Appeal	19 20
	28.	News & Courier Co.	15 00
	"	Cincinnati Saturday Night	7 50
	"	Savannah Morning News	18 00
	29.	Kansas Times	10 00
	30.	New Orleans Picayune	26 67
	"	Appleton's General Guide	62 50
207	July 2.	Daily & Weekly Intelligencer	7 50
	"	Washington Post	25 00
July	2.	National News Bureau	13 50
	"	La Artiste	15 00
	"	The Season	20 00
	25.	Chattanooga Times Print'g Co.	5 10
	31.	Landmark, Norfolk	6 75
Aug.	1.	Baltimore Day	17 00
	3.	Staunton Virginias	5 00
	24.	Knoxville Tribune	10 00
	"	The Reporter	20 00
	30.	Richmond & Danville R. R.	40 00
	31.	American Queen	14 40
Sep.	13.	La Artiste	10 00
	28.	The State newspaper	20 00
	"	Montford & Co.	25 00
	"	Military Service Gazette	10 00
	"	Richmond Whig	10 00
	"	The Times-Star Co.	38 00
	"	Knickerbocker	11 25
	"	N. Y. Home Journal	23 20
	"	The Press Company, Limited	37 50
	"	Boston Home Journal	18 76
Oct.	2.	Times Printing Co.	5 10
	"	Central Baptist	14 56
	31.	Nashville American	25 50
	"	Guide Book Louisville, G. W. Park	5 12
	"	Norfolk Virginian	12 00
			$1,201 09

208 *White Sulphur Springs Furniture Bills.*

1883.

June	4.	Geo. F. Bassett & Co., crockery	247	50
	5.	Do. prepaid freight	16	42
	"	Freight bills	163	97
	7.	Geo. F. Bassett & Co., crock'y & gl'w.	4,129	16
	12.	Jno. Turnbull, Jr., & Son (linoleum)	172	00
	"	Wyckoff, Seaman & Benedict, typewriter	90	00
	14.	Geo. P. Stacy, drop., handles, &c.	18	75
	"	Jno. Turnbull, Jr., & Son, matting	299	30
	"	Geo. F. Bassett & Co., crockery	75	00
	15.	Jno. Turnbull, Jr., & Son, matting	88	50
	"	Keen & Haggerty, water-coolers	14	00
	16.	Geo. F. Bassett & Co., crockery	6	00
	"	James G. Watkins & Son, mold'gs, &c.	390	96
	"	Kerngood Bros., damask, &c.	1,393	36
	"	Freight bills	94	85
	18.	Oakley & Keating, laundry, furniture	3	50
	21.	Freight bills	89	58
	22.	J. H. Stillman & Co., napkins, tools, &c.	1,471	25
	23.	James T. Watkins & Son, molds, &c.	37	50
	"	Reed & Barton, replating knives, &c.	296	70
	"	James T. Watkins & Son, molds	46	42
	"	Freight bills	8	44
	25.	Geo. Gibson, Jr., burners, chimneys, &c.	16	65
	26.	Sam'l Child & Co.	113	75
	"	Kerngood & Bros., damask, &c.	305	47
	29.	Geo. Gibson, Jr., lamps, &c.	20	00
	30.	Jacob Gmeinder	100	00
209	July	5. Geo. T. Bassett & Co., crockery	15	75
	"	Keen & Haggerty, couplings, &c.	10	75
July	5.	J. W. Collender Co., billiard tables	503	60
	"	Freight bills	138	34
	6.	Oakley & Keating, laundry, furniture	41	65
	"	Geo. P. Stacey, nickel rings, &c.	9	90
	7.	Kerngood Bros., quilts, &c.	137	50
	9.	Geo. F. Bassett & Co., crockery	12	00
	11.	Keen & Haggerty, sundries	10	50
	"	Geo. P. Stacey, covers, chairs, &c.	72	40
	12.	Geo. Gibson, Jr., lamps, burners, &c.	31	10
		Freight bills	8	55
	16.	Oakley & Keating, laundry, furniture	58	00
	17.	Mrs. Padgett, hemming sheets	7	25
	18.	Geo. Gibson, Jr., burners, &c.	5	75

1883.

July	21.	Jno. Turnbull, Jr., & Son, matting	20 00	
	23.	Miss Vance, hemming napkins	7 95	
	"	Freight bills	17 55	
	25.	Mrs. Pasville, hemming sheets, &c.	5 30	
	26.	Freight bills	8 70	
	30.	Jennie Lynch, hemming sheets	1 40	
	31.	Lucie Beale, " "	87 50	
	"	Sam'l Child & Co., lawn tennis set	17 00	
Aug.	2.	Mrs. Rowan, hemming	80	
	3.	" Tinder, "	1 70	
	4.	" Donally, "	5 50	
	6.	Hahl Man'f'g Co., electric light globes	9 75	
	"	Mrs. Clifford, hemming	80	
	"	Freight bills	18 63	
	"	Mrs. Hillery, hemming	6 30	
	10.	Mrs. Wickline, "	1 80	
210	Aug. 10.	Geo. F. Bassett & Co., crockery	48 25	
	"	W. H. Collender & Co.	2 00	
Aug.	11.	Duparquet & Huatt, retinning, copper, &c.	583 10	
	18.	Mrs. Mann, hemming	3 80	
	25.	Freight bills	2 60	
	"	Geo. Gibson, Jr., sundries	4 13	
	24.	" " " "	12 45	
Sep.	1.	J. Thomas & Sons, desks, screens, &c.	192 00	
	27.	Watchman's time detective	75 00	
	"	1 desk	17 00	
	"	Geo. P. Stacey, mattrass, &c.	858 30	
	"	165 yards linoleum	165 00	
	27.	S. Child & Co., flower stand, &c.	27 00	
	19.	Schneider & Tucks, Eastlake ebony frames	66 50	
Oct.	12.	Geo. P. Stacey, mattrasses, &c.	172 80	
	"	Hygeia hotel, knives, &c.	82 60	
				$13,295 28

Credit:

Matting sold to Allen, the barber	10 00
	$13,279. 28

Itemized Statement of Bills Relating to Building & Repairs Account, White Sulphur Springs.

1883.

Ap'l	27.	G. W. Thomas, shingles	9 00	
	30.	Watkins, Cottrell & Co., sundry hardware	67 66	
May	9.	Armstrong & McKelvy, white lead	124 00	
	29.	J. A. Gardner, shingles	9 37	
211		Freight bills	24 79	

1883.

May	31.	Keen & Haggerty, roofing	34 75
June	2.	J. W. Bowyerton & Son, paints, &c.	123 83
	"	Do., "	40 94
	4.	Purcell, Ladd & Co.	5 65
	5.	Do.	28 85
	"	Freight bills	90
	9.	J. S. Suiber	16 00
	14.	Watkins, Cottrell & Co.	3 67
	15.	St. Lawrence Boom & Manuf'g Co.	107 60
	16.	J. W. Bowyerton & Son, paints, &c.	22 20
	15.	J. H. Williams & Co., sundry machinery	100 50
	16.	Freight bills	6 46
	18.	Purcell, Ladd & Co., benzine	2 25
	"	J. H. Williams & Co., sundry machinery	59 20
	"	Watkins, Cottrell & Co., hardware	35 09
	19.	J. W. Bowyerton & Son, paint, &c.	79 35
	20.	Watkins, Cottrell & Co., hardware	12 00
	"	G. P. Stacey, "	14 47
	"	Jno. Harper, lumber	52 37
	"	Freight bills	11 62
	25.	Jno. H. Williams & Co., sundry machi'y	102 53
	27.	C. P. Knight, felt	9 23
	29.	Purcell, Ladd & Co., kalsomine	18 30
	"	Am. Carbon Co., sundries	114 05
July	2.	Watkins, Cottrell & Co., hardware	28 00
	"	C. P. Knight, felt	18 46
	3.	Freight bills	40
	5.	J. H. Williams & Co., sundry machi'y	53 50
	"	C. P. Knight, felt	52 33
	"	J. H. Williams, sundry machin'y	161 55
212	July 5.	Freight	25 45
	12.	Do.	20 13
July	17.	J. H. Williams, sundry machinery	18 70
	18.	Ashton Starke, fence wire	1 00
	23.	Freight bills	16 52
	24.	James H. Hoke, lumber	11 30
	"	J. H. Williams & Co., sundry machin'y	84 36
	26.	Freight bills	2 45
	27.	J. H. Williams & Co.	157 37
	"	J. H. Hoke, lumber	9 19
Aug.	3.	J. H. Williams & Co., machinery	34 50
	"	Ch's White, repairs to furn.	1 00
	4.	Freight bills	7 25
	6.	J. H. Williams & Co., machinery	5 60

1883.				
Aug.	6.	Freight bills	4 02	
	13.	" "	8 35	
	14.	Miller & Boon, lumber	229 32	
	18.	J. H. Williams & Co., machinery	77 54	
	20.	Freight bills	13 65	
	23.	Laundry Mach. & Supply Co., mach. for laundry	25 00	
	25.	Thos. Basshor & Co., repairs to boiler.	50 20	
	"	Freight bills	1 54	
	31.	J. H. Williams & Co., machinery	10 50	
Sep.	1.	Geo. M. Richter, tinning roof	50 87	
	"	Roncevorte Foundry Co., machinery.	127 00	
	4.	Freight bills	4 00	
	11.	" "	1 65	
	13.	J. H. Williams & Co.	10 25	
	14.	Elbow pipe	25	
	27.	Hefelfinger, cement	19 00	
	"	Worthington duplex pump	310 50	
213	Sep. 27.	1 foot valve	8 50	
	"	4 slat doors	10 00	
Sep.	27.	Gallagher, rep. furnace	1 25	
	30.	J. H. Williams & Co.	112 40	
Oct.	4.	Repairing well	50	
	27.	Gilbert & Barker Mfg. Co., repairs gas eng.	100 14	
	31.	D. Y. Huddleston, lime	13 10	
	"	Miller & Boon, lumber	7 60	
				$3,142 82
	Credit on goods returned:			
July	2.	J. W. Bowyerton & Son	11 10	
	14.	Jno. H. Williams & Co.	6 50	
Aug.	28.	" "	9 30	
Oct.	12.	" "	18 81	
		Rent paid & sundries sold	81 36	
				$127 07
				$3,015 75
Proportion of wages charged to building & repairs				3,029 81
				$6,045 56

Statement of Receipts, Disbursements, and Profits of the Greenbrier.

House:		
Total receipts from guests	$123,051 72	
Rents for privileges	5,071 16	
Ten-pin alley	605 40	
Billiards	924 50	
		$129,652 78

Bar:

Total receipts		9,019 70

214 Baths & water:

Baths	$1,433 25	
Water	988 70	
		$2,421 95

Laundry:

Total receipts		2,036 96

Farm & livery:

Total receipts		9,995 32
Interest		82 77
		$153,209 48

Summary of Gains.

Cash turned over to receiver		2,112 03
Improvement on property		19,324 84

Increase in Farm Stock.

2 colts, at $50.00	$100 00	
14 calves, at $15.00	210 00	
9 hogs	30 00	
23 cows	1,097 00	
Hay, fodder, oats, & corn on hand	1,367 12	
		2,804 12
Stock on hand in wine-room	2,930 75	
Less am't on hand at com'nc't of season	891 08	
		2,039 67
Stock on hand in store-room	1,728 94	
Less am't on hand at com'nc't of season	882 40	
		846 54
		$27,127 20

215 *White Sulphur Springs Property from Dec. 9, 1882, to Nov. 9th, 1883.*

Supplies:

Provision bills	44,856 60	
Steward's orders	7,943 99	
Fuel & light bills	1,666 83	
Bar bills	7,521 76	
Farm bills	5,292 44	
		$67,281 62

Wages:

Paid from Dec. 9th, 1882, to Nov. 9, 1883		44,505 05

Expenses:		
Office expenses, &c.	3,868 53	
Advertising bills	1,201 09	
Transportation of employees	2,821 80	
Freight & express	6,312 72	
Insurance	4,578 80	
License & taxes	1,203 00	
		$19,885 94
Building repairs & furniture:		
Bills paid for material	3,015 75	
Wages & mechanics	3,029 81	
Bills paid for furniture & equipm't	13,279 28	
		$19,324 84
Cash to receiver herewith		2,112 03
		$153,209 48

216 *Depositions, Exhibits, &c, Filed as Part of Report No. 2 of Commissioner Gallaher.*

Depositions of witnesses taken before the undersigned in Richmond, Va., April 22nd, 1885, to be read with and made part of my report to be filed at the June term, 1885, of the United States circuit court for the district of West Virginia.

Note.

It is agreed by counsel and parties that these depositions, or a copy thereof, shall be used in the suit of Hodges & Bros. and *als. vs.* Greenbrier White Sulphur Springs Co. & *als.*, now pending in the district court of the United States for the district of West Virginia, at Charleston, West Va., to have the same effect as if taken originally in said suit in said district court.

Present: W. A. Stuart, Tazewell Ellett, Hunter Marshall, J. H. Dooley, E. H. Fitzhugh.

E. H. Fitzhugh, attorney for trustees, Gordon & Carrington; H. H. Marshall and Tazewell Ellett, for creditors; J. H. Dooley, attorney for the Greenbrier White Sulphur Springs Company.

William A. Stuart, a witness introduced by H. H. Marshall and Tazewell Ellett, attorneys for creditors, being first duly sworn, deposes and says as follows:

Note.

The witness, W. A. Stuart, desires a protest to be made to giving his deposition here and now, because he has testified before and not expecting to be examined and not being present for that purpose and not having refreshed his memory with a view to testifying and on account of the absence of his counsel, but understanding that the last objection, if insisted upon, will cause delay of one day in the

work before the commissioner, withdraws that objection; there-
217 upon being required by H. H. Marshall and Tazewell Ellett, attorneys for creditors, to give his testimony, he does so. It is understood that the deposition of said W. A. Stuart is to be left open and unsigned until the arrival of his counsel, W. J. Robertson, Esq.

1st question by H. H. Marshall. You are shown a book purporting to be "Minutes Greenbrier White Sulphur Springs Co., West Virginia," which appear to contain the proceedings of the stockholders and incorporators of the Greenbrier White Sulphur Springs Co., and also proceedings of the board of directors of the said company, commencing at page 3 of the said book and ending at page 47 of said book, inclusive, and pages 100, 101, and 102 of which also contain proceedings of stockholders, and from which book it appears that pages 15 and 16 have been cut out. State whether that book is what it purports to be; and please state whether you have been a director of the said company ever since its organization, and whether you have been vice-president thereof at any time; and, if so, state the period during which you were vice-president and the period during which you were president, and also state who are at present members of the board of directors and who is the president and vice-president of the said company.

Answer. I have often seen the book referred to in the question. I recognize it as the book in which the proceedings of the company were usually kept. Occasionally meetings of the directors were held in the absence of this book and minutes were made on paper with a view of having them transcribed at a future time in the book. So far as I know, these loose minutes were transcribed as intended, except a memoranda of directors' proceedings April 12th, 1883, at which H. Phoebus was elected vice-president. As to the cutting out
of pages 15 and 16 I can state nothing. I am sure I was not
218 aware of it until to-day. I was made president of the company at its organization, in December, 1880. I acted as president before that, under an irregular organization. I was succeeded as president by Gov. Mathews, Dec. 1st, 1881. (See minute book, page 34.) At the same meeting I was elected vice-president. I have no independent recollection as to the exact time of my acting as president or vice-president. I have been a member of the board of directors since the organization of the company. There has been no meeting of the stockholders and directors since May 18th, 1883, so far as the minute book shows. On that day the stockholders met (according to the minutes, which I believe are correct), and there was present H. M. Mathews, J. P. Branch, W. A. Stuart. On that occasion it appears that the resignation of Alex. F. Mathews was presented and accepted and A. S. Buford was elected in his stead. Refreshed by the minutes at this meeting and by the proceedings of the stockholders on April 11th, 1883, I am enabled to say that the last directors appointed were Henry M. Mathews, John P. Branch, Harrison Phoebus, Jas. H. Dooley, R. R. Bridges, A. S. Buford, and myself.

2nd question by same. If you have a copy of the memoranda of

the meeting of the board of directors at which you state that Mr. Phoebus was elected vice-president and which you state was not transcribed into the book you speak of, please file it.

Answer. I herewith file it as "Exhibit W. S. No. 20." These minutes are not signed, but I have an independent recollection that such proceedings were had and that minute was made by me with a view of its being transcribed and signed on the minute book.

3rd question by same. Have you any other memoranda of this transaction except the paper just filed by you?

Answer. I have no other.

219 EXHIBIT W. S. No. 20.

RICHMOND, VA., *April 11th*, 1883.

Meeting of stockholders.

Wm. A. Stuart, president of meeting, & H. M. Mathews, sec'y.

Wm. A. Stuart, Jno. P. Branch, Harrison Phoebus, Jas. H. Dooley, R. R. Bridges, A. F. Mathews, & H. M. Mathews elected directors.

Adjourned until to-morrow at 3 o'clock p. m.

H. M. MATHEWS, *Sec'y.*

APRIL 12, 1883.

Met pursuant to adjournment.

Jno. P. Branch in the chair. H. Phoebus was elected vice-president, H. M. *H*athews having been elected president.

4th question by same. Were you the vice-president of the company before Mr. Phoebus was elected, as you say; and, if so, did you resign your place as vice-president; and, if so, was that resignation in writing or was any record thereof kept? And, if so, please point out on the book or produce any such memorandum.

Answer. I can only say that from the records I infer that I was vice-president up to March or April, 1883. I have no independent recollection on the subject. It seems from the unrecorded directors' proceedings just filed that there may have been a meeting of directors the day before, the proceedings of which were not recorded. I do not remember the circumstances of my resignation of the vice-presidency. It was the time for the election of new officers, and it may be that I was left out at my request, but I cannot say. As Mr. Phoebus was about to open the springs as lessee, it was thought it would be well to attach the title of vice-president, as he was a director. It is on this account that I remember the circumstances.

220 5th question by same. Was there ever any meeting of the stockholders or of the board of directors of the company at which any business was transacted by the stockholders or the board of directors at which you were not present?

Answer. I do not at present recall any.

6th question by same. It appears from the proceedings of directors, pages 37 & 38 of the minute book, that coupon bonds to the amount of $200,000 be sold at not less than 50 cents on the dollar, and that $100,000 of stock be sold at par, the stock and bonds to be sold together—that is, the purchaser of $100 worth of stock at par

was to take bonds to the amount of $200 at not less than 50 cts. on the dollar, and that a deed of trust should be prepared to secure said bonds. For more minute particulars look at the minute on the pages referred to, and state whether, in accordance with that minute, the deed of trust therein provided for and the bonds therein mentioned were not subsequently executed; and also state whether you took any of these bonds upon the terms mentioned in the said minute, and whether you took the corresponding amount of stock, and whether you ever paid to the company the price of the bonds which you did so take at 50 cents on the dollar and the price of the corresponding amount of stock at par, and, if so, when and how. State also whether any other member of the board of directors agreed to take and did take any of the said bonds and stock on those terms, and, if so, who was it, and do you know whether he ever paid for the same; and please also state whether you did or did not obtain from Henry M. Mathews and George L. Peyton, both of whom were directors of said company, and said Mathews, the president thereof, an agreement in writing that they would not take any of the said bonds on these terms.

Answer. I have examined the minute book, pages 37 and 38, and such proceedings as you describe therein appear. The deed of trust and the bonds therein referred to were afterwards duly exe-
221 cuted. I was a holder of one-fourth of the original stock of the company, and I agreed from first to last to take a corresponding amount of the new stock and bonds upon the plan proposed, viz., to take $50,000 of the bonds at 50 cents on the dollar and $25,000 of the stock at par. I paid off and settled my obligation by tendering to Gov. Mathews, then president of the company, an equal amount of the company's obligations, and took a statement from him showing the fact. I have since laid these obligations and Governor Mathews' certificate before the commissioner in the case. I will state here that the action taken by the board of directors was approved by the stockholders in stockholders' proceedings, page 100. Mr. J. P. Branch took some of the bonds and stock, but I believe he claims to hold them as collateral. Mess. Mathews and Peyton declined to take the stock and bonds on the plan proposed. Mr. Branch spoke with confidence to the effect that he and his co-stockholders would take $50,000 in value, and would take, in addition, so much as Mess. Mathews and Peyton declined to take. He did this as early as February, 1882, and, I think, on previous occasions and subsequently. I think Maj. J. H. Dooley was at first inclined to take his share. He afterwards said in the board and in the presence of Mr. Branch that he (Branch) had agreed to take his (Dooley's) share of these securities. The proceedings show that every stockholder had the privilege of taking the securities on the terms stated in proportion to his stock. I was anxious that no time be lost in placing the securities so as to relieve the company from embarrassment. Mess. Mathews and Peyton having verbally declined to take their share of the securities, and no mention of that fact being on the minutes, I thought it best to have their declination in

writing, and prepared a paper showing the fact, which they signed, and a copy of which I herewith file, marked No. 21.

Copied by me from the original.—D. C. Gallaher.

EXHIBIT W. A. S. No. 21.

222 "RICHMOND, VA., *April 26th*, 1882.

I hereby waive in favor of W. A. Stuart my right to take one-fourth of the stock and bonds provided by the Greenbrier White Sulphur Springs Company for the purpose of raising $200,000 to pay off the indebtedness of the company, and said Stuart has the right to take said bonds and stock to which I would be entitled for his own account or dispose of the same to others, as he may deem best, provided he accounts to the company for all the bonds and stock he may receive

HENRY M. MATHEWS.
GEO. L. PEYTON."

Continuation of Deposition of W. A. Stuart.

7th question by Judge H. H. Marshall. Did you hold any of the said bonds, except the $50,000 of bonds that you took at 50 cents on the dollar; if so, how did you come in possession thereof?

Answer. I afterward received 10 other bonds at $500 each, which were sent to me from the White Sulphur Springs, West Va., to my home in Virginia, for which I gave the equivalent amount in the company's obligation.

8th question by same. Who sent them to you?

Answer. Gov. Mathews, I think, or the treasurer, by direction of Gov. Mathews. I do not think I received any stock with these last bonds.

9th question by same. Did you take the $50,000 in bonds at 50 cents *in* the dollar?

Answer. I took them at par, to my recollection.

10th question by same. Did the board of directors at any time authorize the president to issue these $5,000 of bonds?

223 Answer. I don't know whether there was any special order for the $5,000 of bonds, but when the stockholders declined to take the bonds *in* (and) stock on terms offered I regarded the president as empowered to dispose of them to any one who would buy them. I suppose if I had required stock to be delivered with these last bonds I would have gotten it.

11th question by same. Please state what obligation of the company you paid for these bonds.

Answer. I refer to the list signed by Gov. Mathews in my former deposition.

12th question by same. That paper gives credit for 100 coupon bonds, amounting to $50,000; average interest, $890, and balance due you of $514.75; that balances the aggregate amount of the claims which you paid off, to wit, $51,424.07. There is no mention

there of the stock that you took, nor of the $5,000 of bonds which you say were sent to you from the White Sulphur Springs, but the 100 coupon bonds are put down at par.

Answer. The theory was that the coupon bonds were put at 50 cents *in* (on) the dollar and stock at par in the outset. The reasons for this, I think, *was* (were) that the law of West Va. forbid the disposition of stock at less than par, but, practically, I regarded myself as paying par for the bonds, with the stock given as a bonus. In regard to the $5,000, as above stated, that was an independent matter, not connected with my first undertaking.

13th question by same. You stated that you returned to Mr. Mathews an equivalent of the company's obligation for $5,000 of bonds which he sent you from the White Sulphur Springs. Please state what obligation of the company you sent to him in discharge or payment for these $5,000 of bonds.

Answer. I did not say that I sent these to Gov. Mathews,
224 but I say I discharged the obligation of the company for the equivalent amount of the bonds represented by the note of the company for $5,000, dated Nov. 18th, 1881, payable to George L. Peyton, at the Lewisburg bank, and endorsed by him to me.

14th question by same. Where was said note when you paid it?

Answer. I cannot say now.

15th question by same. Did you pay the full amount thereof?

Answer. Yes, sir; I am sure of it.

16th question by same. Did the board of directors of the company ever authorize by resolution any of the bonds mentioned to be hypothecated for the purpose of raising money to secure any of the debts of the said company?

Answer. I am sure no such resolution was ever passed by the board or the stockholders.

17th question by same. What was the state of indebtedness of the company at the time that deed of trust was executed, except the debt for the purchase of money of the White Sulphur Springs proper?

Answer. I cannot state accurately. It was believed by the directors that this loan would free the company of its floating debt and leave a little for the improvement of property.

18th question by same. Did it do so?

Answer. The loan never was placed in full.

19th question. Of the list of debts contained in mem. (Ex. No. 1, W. A. S.) which were paid off by you, how much were you bound for individually?

Answer. Very much the larger portion of it.

225 20th question. In your deposition heretofore given, at the close thereof you set forth the list of debts that you claim against the company. Are these all the debts that you claim against this company?

Answer. No, sir.

21st question by same. What others do you claim?

Answer. There is a list of the obligations of this company on which I am, with others, bound as endorser. That list is attached to my deposition filed in this case, beginning with the note of the

company, endorsed by Mess. Stuart, Lancaster & Co. and Peyton and Mathews for $6,550.83. Several of these notes I have paid; others are unpaid. Then there are other obligations referred to in my deposition, for which I claim priority, than on page — of my deposition, beginning with the item of insurance Co. for $4,215.47. I hoped to realize the most of these last-mentioned debts from the rents of the property already accrued. Then there is a mechanic's lien in favor of Ogle of $2,588.52, and other smaller amounts for which I claim priority.

22nd question by same. Please look at page 36 of depositions heretofore taken in this cause. Have you any claims against the company which you propose to set up in either of these causes for which you paid less than the amount of the claim; if so, what are they?

Answer. On page 36 there is a list of debts, most of which were purchased by me below par, several of them as low as 50 cents *in* (on) the dollar, which I have set up as a claim against the company at their face value in my deposition. The first debt, Courtney, I gave par for, the following, 50 cents *in* (on) the dollar: Blackmore & Kinsey, Phillip Lidecker, J. H. Signiago, Jones & Hughes. The following I paid for part in money and partly in stock and partly in bonds: Eugene Carrington, Wilson, Parmer & Co., Mason & Co. I paid par for the debt of Basshor & Co., $2,444. I suppose I paid par for J. W. Geddes, but am not sure. The other small debts in the list were gotten on terms I cannot state; I do not remember.

226

23rd question by same. Was there not a suit brought against the company by Courtney? How did you come to pay that debt?

Answer. I did it to get control of the property, and to comply with the terms of the lease of the company to Mr. Phoebus. Judge Jackson had taken possession of the White Sulphur Springs on the application of Mr. Courtney.

24th question by same. What was the nature of that debt? Was it an open account, or by note?

Answer. An open account, I think.

25th question by same. Did you take an assignment of it?

Answer. I do not remember.

26th question by same. Did you pay the money to Mr. Courtney or his counsel?

Answer. I paid it to his counsel.

27th question by same. Who was his counsel?

Answer. L. R. Page was, I think.

28th question by same. Did you pay anything more than the amount of the debt?

Answer. I think I did.

29th question by same. How much, and to whom?

Answer. I don't remember the amount. I think it was to Mr. Page.

30th question by same. Did you take a receipt? If so, please exhibit it.

227 Answer. I cannot state; I don't think I did.

31st question by same. You are an accurate business man. Did you pay that sum of money without taking a voucher therefor or some written evidence of the fact that you had paid it?

Answer. It is to my interest to take receipts, but I cannot say I took receipt for that.

32nd question by same. If you reflect, can you not say whether you did or not take a receipt?

Answer. I did not expect to be called upon to answer such questions.

33rd question by same. What evidence have you that you are the owner of the claim of Courtney?

Answer. (The commissioner says, "I had an assignment.")

34th question by same. Were you bound on any of the debts in your list on page 36, which you paid off at par?

Answer. I was bound on Basshor & Co.'s debt. I had good reasons for paying the Geddes debt, but am not certain that I paid par for it, but am sure I paid more than 50 cents *in* the dollar.

35th question by same. Will you please state what you know of Mr. J. P. Branch having undertaken to take any of the bonds and stock according to the plan adopted by the board of directors, to which your attention has heretofore been called?

Answer. I think, when the subject was first mentioned as to how much each stockholder would take, I stated I would take my share, one-fourth, and I am sure Mr. Branch said that he and his party would take their one-fourth. Then the question was addressed to Mess. Mathews and Peyton as to what they would do and

228 they declined, and Mr. Branch said he could place their share among his friends, alluding, as I understood, to the stockholders who with him owned one-fourth of the stock bought of Lancaster.

36th question by same. In the first instance, Mr. Branch was willing to take one-fourth, was he not?

Answer. I don't think he said he individually would, but spoke for the party connected with him. He said they would when Mathews and Peyton declined to take their respective one-fourth.

37th question. Did not Mr. Branch then say that he and his friends would take the remainder on same terms?

Answer. That is my recollection.

38th question by same. Did he not ask these gentlemen if they would waive their right that he and his friends would take it?

Answer. I am not prepared to say that.

39th question. What was the reason that you got them to waive their right in writing?

Answer. I wanted something that I could show to any one who wanted to take the stock and bonds, and to show that Mathews and Peyton had voluntarily and irrevocably parted with their right to take their share of these bonds and stock. I hoped Mr. Branch and his party would take these bonds and stock.

40th question by same. When did you get your $50,000 of bonds?

Answer. I got them about the time they were issued.

41st question by same. Did Mr. Branch get the same amount at the same time?

229 Answer. I think he got more.

42nd question. He certainly did get more than $50,000, did he not?

Answer. I am sure he got more. I know that Mr. Mathews demanded of him the return of all the bonds in excess of $50,000. Upon refreshing my memory by reference to my deposition in this case, I think he got $55,000.

43rd question by same. Was there or not a subsequent arrangement made by the board of directors of the company or by the authority of the board by which Mr. Branch was to hold the bonds he took on any other terms or conditions than those set forth in the proceedings of Feb. 9th, 1882, to which reference has heretofore been made—that is, to take the bonds at 50 cents *in* the dollar for the amount of said bonds and stock at par?

Answer. No, sir.

44th question by same. Was there no authority given to Mr. Branch to hypothecate any of said bonds to borrow money for the company or secure payment of any debts due by the company?

Answer. I don't think authority was given to any one by the company to hypothecate the bonds and stock.

45th question by same. Do you know what became of the other $90,000 in bonds of this company? You have already accounted for $55,000 in your possession and $55,000 in the possession of Mr. Branch, now tell me what became of the other $90,000.

Answer. I hold in my hand a paper signed by Alex. T. (F.) Mathews, which purports and I believe is his receipt for 190 of these coupon bonds. I think the receipt should be for 180 bonds, and the commissioner has so reported it. I think there is a copy of it in my former deposition.

230 46th question by same. Do you know of any authority given by the board of directors or the stockholders to anybody to hypothecate these bonds with the bank at Lewisburg or anywhere else?

Answer. I do not.

Adjourned to meet in the same place on Thursday, April 23rd' 1885.

In pursuance of adjournment, examination continued by H. H. Marshal:

47th question. Did you receive from the company the 250 shares of stock, amounting to $25,000 par value, at or about the same time that you got the $50,000 of bonds?

Answer. Yes, sir.

48th question by same. Did you ever pay anything on account of said stock?

Answer. I have explained that theoretically I was regarded as paying 50 cents *in* the dollar for the bonds.

49th question by same. You considered paying $50,000 as fully complying with your undertaking to pay $50,000 for $50,000 of bonds at 50 cents *in* the dollar and $25,000 of stock at par?

Answer. Yes, sir.

50th question by same. Did the board of directors make any order authorizing you to apply the $50,000 which you had agreed to pay for the bonds and stock mentioned to the particular debts that you were to pay with that money?

Answer. I do not think there was any express resolution to that effect. The primary object of the loan being to discharge the floating debt, I regarded the turning in of that amount of the
231 floating debt as equivalent to paying cash.

51st question by same. But I don't understand you to allege that authority was given by the company to you to apply that money as you thought proper to the payment of any part of the floating debt.

Answer. As above said, no express authority.

52nd question by same. Was there any other authority; If so, what?

Answer. There was a well-implied authority.

53rd question by same. How?

Answer. The talk among the directors themselves was with reference to using these bonds and stock to pay up the floating debt. I received these $50,000 of bonds and $25,000 of stock with that understanding on my part, and without any agreement at any time to pay money therefor; and I am sure it was not expected by any director that I should pay money, except so far as the obligation I had on the company might fail to pay for the bond and stock.

54th question by same. Was there no order or resolution of the company or the board of directors in respect to the manner in which the money to be paid by Mr. Branch for the bonds and stock taken by him was to be disposed of?

Answer. I think not. I regarded him as receiving the bonds as I did and on the same terms.

55th question by same. How long after the bonds were prepared were they ready for delivery before the paper of April 26th, 1882, signed by Mathews and George L. Peyton, was executed?

Answer. I am sure that the bonds and stock had just then been prepared.

232 56th question by same. State, if you remember, when you received the bonds and stock.

Answer. My receipt for the bonds and stock is dated April 28th, 1882. I prepared the paper signed by Mathews and Geo. L. Peyton, waiving their right to take the bonds and stock on the 26th of April, 1882, and obtained the signature thereto of H. M. Mathews, we both being in Richmond. Col. Peyton was in the North preparing for the spring season. Leaving Richmond for my home, I met Col. Peyton at Charlottesville on his return and took his signature to the paper. Col. Peyton attached his signature probably about the 29th or 30th of April. The bonds and stock having been prepared, I desired them to be placed as quickly as possible. I regarded the

waiver of Peyton and Mathews in writing as an important step at the beginning. They had waived their right to take bonds and stock, verbally, some time previously—one or two months at least.

57th question by same. Did Mathews and Peyton, as members of the board, object to the issuing bonds in making a deed of trust to secure them, than disposing of them at 50 cents *in* the dollar, at first?

Answer. There may have been some slight objection expressed, but there was no vote against it.

58th question by same. Did Peyton request you to carry a portion of the stock and bonds for him?

Answer. I think he did.

59th question by same. And you declined?

Answer. I declined, giving my reasons, to wit, it was not convenient for me to do so; that I would prefer not to carry the $50,000 in full that I had agreed to carry, but I had no alternative.

60th question by same. Do you remember when this company was organized first?

233 Answer. I fix the date by the minute book. I have no distinct recollection of it as December 29th, 1880. I see on that day the stockholders met at the Barnum's hotel, in the city of Baltimore, and that was the first meeting. The certificate of incorporation was spread in the book at pages 5 & 6 and is dated December 6th, 1880.

61st question by same. At what time was the Greenbrier White Sulphur property purchased of you, and by whom, and upon what terms?

Answer. In January, 1880, I entered into a contract with J. N. Camden and Geo. L. Peyton, by which I was to become the purchaser of the Greenbrier White Sulphur Springs and subsequently to convey it to a joint stock company to be thereafter formed, and was to give much longer time for the payments of the company than was given by the terms of the decree of sale of the property entered by Judge Jackson, at Charleston, W. Va., on March 31st, 1882. The property was sold pursuant to that agreement and I became the purchaser. The gentlemen I have mentioned, with myself, at once took possession of the property and proceeded to run it as a summer resort. The charter had been applied for very soon after the sale, but there was no permanent organization under it. There was no sale of the property by me to any incorporated Co. (Dec. 6th, 1880), because before that there was no properly organized Co. We ran the property as if we were a joint stock Co. and as I had made a sale of it, but there had been no formal transfer in writing, so far as I now remember, of the property from me to the company until on or after Dec. 29th, 1880. Subsequent to that meeting the property was duly conveyed by me to the company, with the reservation of the vendor's lien.

62nd question by same. Did you make that conveyance before you acquired the title from the United States district court, from whose commissioners you purchased it, or did you make the

234 conveyance in order that the deed of Carrington and Gordon to secure $200,000 of bonds might be executed?

Answer. I did not make the deed of conveyance to the company until I received the deed from the commissioner of Judge Jackson's court.

63rd question by same. You have said that by deed you have reserved the vendor's lien. Did you not by that deed expressly exempt from the vendor's lien two (2) acres of land, a part of the White Sulphur Springs proper, together with certain rights and privileges thereto pertaining? Will not the deeds speak for themselves?

Answer. Yes; I did exempt two (2) acres from operation of the vendor's lien. The terms of agreement will appear in the deed itself.

64th question by same. Then I understand that the first year, to wit, till late in the season of 1880, it was run by the gentlemen who purchased the property from you and yourself, calling yourselves the Greenbrier White Sulphur Springs Co., although there was no organization during that season under any charter whatever, a charter, however, having been obtained under which you declined to organize. In other words, whether it was run by partnership under the style of the Greenbrier White Sulphur Springs Co.?

Answer. We proceeded under irregular organization. The charter had been granted, which I approved, but which was objectionable to Mr. Camden. I cannot say how Mathews and Peyton were affected toward it. At any rate, we went on without legal organization under it or any other charter that season. The legal effect may have been to constitute us partners. That is a question of law which I do not undertake to decide.

65th question by same. You mention H. M. Mathews now for the first time. Was he united with you in running the springs in the season of 1880?

235 Answer. Some time during the season of 1880 it became known that he was connected with the management and interested in the property.

66th question by same. Please look at the minute book and state what was the capital stock of this Co. at its first organization.

Answer. $150,000 was the capital stock.

67th question by same. How was it taken and who took it?

Answer. W. A. Stuart, 375 shares; Geo. L. Peyton, 375 shares; J. M. (N.) Camden, 188 shares; W. P. Thompson, 187 shares; H. M. Mathews, 375 shares; making in all 1,500 shares, par value of $100.

68th question by same. How much of that capital stock was paid in money, and when, and by whom?

Answer. I think $75,000 or $80,000 had been paid in money early in 1880.

69th question by same. Do you mean to say that the capital stock that was paid, to wit, $75 or $80,000, was paid before the charter of the 6th of Dec., 1880, was obtained and before there was any organization made?

Answer. I think all but a small amount was. I paid one-fourth of it and I paid Geo. L. Peyton's one-fourth. So far as I know, the

other stockholders paid their one-fourth. I cannot say. My impression is that the charter we first applied for certified that we paid in $50,000.

70th question by same. When you paid anything for Peyton, whose stock you undertook to carry, did you not take his negotiable note for the sums of money that you paid for him?

Answer. I undertook to carry Mr. Peyton's stock to a limited amount and did do it, and when the money was paid I did take his negotiable note for his share.

236 71st question by same. I find on pages 12 & 13 of the proceedings of the board of directors at the first meeting, held at Barnum's hotel, Baltimore, immediately succeeding the meeting of the stockholders held at the same place; please state whether that meeting did immediately succeed, in point of time, the meeting of the stockholders.

Answer. That is my recollection.

72nd question by same. At that meeting at Barnum's hotel, of which I have spoken, of the board of directors I find a resolution in these words: "On motion, the stockholders were called upon to pay in their respective portions of the $4,000 heretofore agreed to be paid, which, when paid, will be in full of the capital stock of $150,000, provided as full paid-up-stock."

73rd question by same. You have said that only $75 or $80,000 of the capital stock ($150,000) has ever been paid in. Did you make it full-paid stock?

Answer. What I said was that $75 or $80,000 had been paid in money early in the season of 1880. I regarded ourselves as justified in adding to that the profits of the season of 1880, which Col. Peyton (the superintendent) reported as something over $56,000. We also regarded the contract made between ourselves in January, 1880, before referred to, together with the loss of time and trouble to which we were subjected, as constituting the elements of value to consider in selling this property to the joint stock Co. Mr. Camden, who was familiar with the West Va. corporation law and to whom we deferred, was very confident of the legality and propriety of the course we adopted in declaring the capital stock of $150,000 subscribed by us fully paid up. We desired to further improve the property and to pay off the debt of the Co., and with that view it was thought advisable to bring in new capital. Mr. Camden said to bring
237 them in, that they, the new stockholders, would require that they be let in on the ground floor. After summing up the amount paid in and other considerations mentioned, he said that by payment of $4,000 in addition the stock of $150,000 would be fully paid up, and that that was ground floor enough. He further said he had no doubt of his ability to get capitalists to take corresponding amounts of the $150,000 and pay for the same in cash, and a resolution was adopted at that same meeting allowing an increase of $150,000 of the capital stock. I think Mr. Camden mentioned the name of Huntingdon and his friends as parties who would likely take this additional $150,000.

Judge H. H. MARSHALL: I object to the declaration of Mr. Camden and gave notice while Mr. Stuart was stating what Mr. Camden said that I should object, but was willing that he should made his statement, subject, however, to this objection.

74th question by same. Were not debts contracted in 1880 which remain unpaid to-day?

Answer. Yes, sir.

75th question by same. So you did not apply the profits you spoke of as having been made in the season of 1880 to the payment of the debts, nor did you divide these profits among the stockholders?

Answer. We applied them to the payment of debts and the improvement of property so far as they would go.

76th question by same. Was it not to your interest, as the vendor of this property, to have it permanently improved?

Answer. Yes, sir; it was.

77th question by same. Did you or Mr. Camden or the Co. succeed in getting the other capitalists to come in and take the $150,000 of which you spoke as additional capital, except that part of
238 it taken by Mr. Branch and yourself at the same time that you took the $50,000 of bonds?

Answer. Mr. Camden undertook the negotiation of the $150,000 mentioned in the resolution of Dec., 1880, and told me he was about to succeed, when his negotiations were interrupted by a proposition from Mr. Lancaster to buy his and Thompson's interests. The placing of the bonds and stock with Branch and myself had nothing whatever to do with the scheme originated by Mr. Camden in December, 1880.

78th question by same. Was Mr. Camden's scheme carried out?

Answer. No, sir.

79th question by same. Did you ever get one dollar from the company under that scheme?

Answer. I think not.

80th question by same. Did not Mr. Camden and Mr. Thompson sell out their interest?

Answer. I have stated that they sold their interest early in 1881.

81st question by same. How long was it that Mr. Camden was connected with the company after its organization, on Dec. 29th, 1880?

Answer. I think not more than three or four months.

82nd question by same. When Mr. Thompson sold to Mr. Lancaster, do you know what price he got for the 375 shares?

Answer. I have heard that it was on the basis of cost paid in money.

83rd question by same. Well that money was about $17,500, was it not?

Answer. I am under the impression that it was a little more than that.

239 84th question by same. Was the $4,000 mentioned in your resolution ever paid up; if so, when?

Answer. I think it was, except $1,000 by Gov. Mathews; am not sure if that has ever been paid; I think it has not.

85th question by same. Have you any idea of the amount of debt contracted in 1880, prior to the 29th of Dec. of that year, remains unpaid?

Answer. I have not.

86th question by same. How about the debt of the notes discounted by the Bank of Lewisburg?

Answer. I cannot state accurately

87th question by same. Is there anything due that bank now?

Answer. There is a large amount due them now, some of which was contracted in 1880, but cannot give the exact amounts contracted in that year. I think there was a debt of Basshor & Co., which has never been paid by the Co.

88th question by same. Do you know how much is due the Bank of Lewisburg now?

Answer. $30,000, with some interest.

89th question by same. Did not the principal part of that debt originate in the year of 1880?

Answer. I think not. I think a great deal of it did, though.

90th question by same. You have stated that in arriving at the conclusion that the $150,000 of stock was fully paid up you had the summing up of the money actually paid and the profits reported by Col. Peyton for the season, and the time and trouble that you gentlemen had expended and undergone made up the sum
240 of $150,000, together with $4,000. Please tell me how you sum that up, if you have that summing up and can furnish it? I do not find it in any of the minutes of the Co.

Answer. I did not do the summing up and have not got a copy of it. My recollection is that it was done by Mr. Camden.

91st question by same. When the summing up was made, was it understood that the debts contracted during the season of 1880 were not to be provided for out of these profits?

Answer. The profits had already been expended. It was expected that the unpaid debts would be paid up by the introduction of new capital into the Co.

92nd question by same. Was not that Co. insolvent at the time of its organization?

Answer. We were far from thinking so.

93rd question by same. What did you have?

Answer. We had what we regarded as an immensely valuable real estate, greatly improved, showing a large earning capacity, encumbered by a debt which we regarded far less than the value of the property.

94th question by same. Was it valuable for the payment of the debts of the Co.?

Answer. We thought that capitalists would be induced to advance money for the stock, indebted as it was.

95th question by same. But in that you are mistaken?

Answer. I don't think I am. I believe that if Mr. Camden had not been bought out that the $150,000 would have been raised in a

very short time. I have it from him that he had every encouragement from Mr. Huntingdon and his friends.

96th question by same. Do you know what made him sell at cost?

241 Answer. I think I do. Messrs. Mathews and Peyton did not like the idea of having their stock reduced relatively by the introduction of new stock on the ground floor. Mr. Camden argued the point with them, and said he would be willing to take all he put in and get out and let any one get in who wanted to. Mess. Mathews and Peyton, remembering this and still being averse to a reduction of their relative amounts of stock, negotiated with Mr. Lancaster to purchase Mr. Camden's stock, and telegraphed him to know if he would adhere to what he had previously said as to taking the money he had put in and go out of the Co. He replied affirmatively, and Mr. Lancaster took his place. I know from Mr. Camden that he was extremely reluctant to go out of the Co.

97th question by same. Did not Col. Peyton and Mr. Mathews both vote for and actually sign the resolution increasing the capital stock $150,000, and don't the minutes show it?

Answer. Yes, sir.

98th question by same. Can you show me anything in the proceedings of the board of directors to indicate that these gentlemen did oppose in any way that proposition?

Answer. Nothing appears on the minutes to that effect, but the fact remains that they did verbally complain.

99th question by same. How long did Mr. Lancaster stay?

Answer. I think he stayed in until August or September, 1881; he was in during the season of 1881.

100th question by same. During the latter part of the season he sold it to Mr. Branch, did he not?

—. Yes, sir.

242 101st question by same. Did you not try to sell out?

Answer. I did try to sell part of my interest to Mr. Branch.

102nd question by same. Was that before or after Mr. Lancaster sold it?

Answer. It was before.

103rd question by same. How long before?

Answer. Perhaps a week; cannot say positively.

104th question by same. Please look at this book, which I will call a scrip book, and state whether you recognize it as the scrip book of this company.

Answer. I do.

105th question by same. Have you examined it?

Answer. I have.

106th question by same. What were the profits, if any, in the season of 1881?

Answer. I cannot say.

107th question by same. Have you any idea? Were they much or small?

Answer. I think it was a good season, but cannot say whether much or small.

108th question by same. Were there any debts contracted in that season that remain unpaid?

Answer. I think so.

109th question by same. How about the year of 1882? What were the profits, if any?

Answer. I cannot say.

110th question by same. Was not this Co. entirely insolvent
243 at the end of the season of 1882?

Answer. It went into the hands of a receiver. The sale of its effects will show whether it was entirely insolvent or not. It had many debts unpaid.

111th question by same. Has it ever paid you or any one else, within your knowledge, any interest on any of these mortgage bonds?

Answer. I think not.

112th question by same. There are not many of them. Can you tell us who the stockholders are and the number of shares each holds?

Answer. I think I can. I speak from the scrip book. W. A. Stuart holds 375 shares; Geo. L. Peyton, 375 shares; H. M. Mathews' estate, 375 shares; A. S. Buford, 50 shares; J. H. Dooley, 50 shares; Miss A. E. Branch, 50 shares; C. H. Phinnizy, 100 shares; R. R. Bridges, 75 shares; J. P. Branch, 50 shares. The foregoing list makes 1,500 shares, certified as paid up Dec. 29th, 1880. At the time of the issuing of the new stock, in April, 1882, the following additional stock was issued, to wit: W. A. Stuart, 250 shares; J. P. Branch, on April 28th, 100 shares, and April 29th to J. P. Branch 250 shares. The certificate for the 100 shares to J. P. Branch was transferred to J. W. Kerr, at request of J. P. Branch, April 29th, 1882, and cancelled certificate issued to J. P. Branch can be found pinned in the scrip book. The certificate for the 250 shares dated April 29th, 1882, issued to J. P. Branch, is also pinned in the scrip book, with the names of the president and secretary cut out and pinned to the said certificate. All of this stock issued in April, 1882, was in connection with the issuing of the mortgage bonds of that period.

113th question by same. When was it that the Co. undertook to construct a race-course on its grounds and to purchase from P. Grant the property near the White Sulphur Springs?

244 Answer. I cannot give the date from memory. We authorized the expenditure of $2,500 on our race-course in the spring of 1882, some time before we had purchased the Grant property.

114th question by same. Was there not opposition to these expenditures of purchasing property to build a race-course and construct a lake, &c.?

Answer. I do not remember of any. I know that afterwards dissatisfaction was expressed.

115th question by same. Did not the Co., in the years 1880 and 1881, have outstanding a large amount of debt due by their negotiable notes endorsed by yourself and other directors? Your memory will be refreshed by looking at the list of debts filed by you on

which you are bound or claim to be bound jointly with others. Please look at your list and state, if you can, whether you know, and, if so, how much of that indebtedness originated in the year 1880. Please also look at mem. (W. A. S. No. 1) and state whether any of the debts paid off by you and there listed originated in the year 1880.

Answer. Examining the list of debts on which I was joint endorser which agrees with my memory, I find that a great deal of these debts against the Co. originated in the year of 1881, but I think a portion of it related back to 1880, but exactly how much I cannot say just now. In the list marked (W. A. S. No. 1) I cannot say that any of them related back to 1880. In turning over the property to the new Co., in Dec., 1880, they were to pay the floating debt as well as the vendor's lien.

116th question by same. Was there no resolution to that effect?

Answer. I am not prepared to say; the books will show. The fact was that the business went on from Dec. just as it had gone on before, using the same books. There was really no break in
245 the business at the time of the permanent organization.

117th question by J. H. Dooley, counsel for the Greenbrier White Sulphur Springs Co. From question 6th of examination-in-chief it is assumed that the stock and bonds which were issued by the Co. in 1882 were issued by authority of the board of directors. Look at the proceedings of the stockholders' meeting held April 6th, 1882, and recorded on page 100 of the minute book, and see whether the stock and bonds allowed to be issued were not authorized to be issued by the meeting of the stockholders.

Answer. I have examined the book on pages 100 and 101 and find that such authority was given by the stockholders.

118th question by same. I understand from statement made by you in your examination-in-chief that you and Mr. Camden and Mr. Mathews and Mr. Peyton were in 1880 the owners of the White Sulphur Springs property, and that you had purchased the property with the intention of organizing a joint stock company, and all your proceedings were conducted with that expectation and with relation to future organization of a joint stock company, and that during the summer of 1880 you made $56,000 by your operations, and during the year 1880 you contributed about $80,000 in money, which went into and for the benefit of the property, and that you afterwards conveyed the property, with all the benefits that had accrued from the expenditures of that $80,000 in money, and leaving the $56,000 of profits which you earned that year to go to the improvement of the property of the new joint stock company when it was organized. Was there not an agreement between you and Mr. Peyton and Mr. Mathews and Mr. Camden, as owners of the property, that you would sell the property to the new corporation, subject to its debts, and with the benefits of the improvements you put upon it, for the price of $150,000, which was to be paid to you in stock of the company?

246 Answer. These recitals are substantially correct, but not accurately so. I have stated the matter about as it hap-

pened. Mathews, Peyton, Camden, and myself were not, strictly speaking, the owners of the property, but the contract of Jan., 1880, between Camden, Peyton, and myself, by which I was to purchase the property and convey it to a joint stock company, to be thereafter formed, was considered of great value, inasmuch as it provided for very extended payments of the purchase-money, much longer than those allowed by the court, and the fact that the property was actually bought by me at what we all regarded a low figure, and the further fact that the season of 1880 developed a large earning capacity in the property, and that our time and talents had been devoted to the improvement of the property—we thought that these considerations and the $75 or $80,000, paid in cash, as a reasonable price at which to dispose of the property.

119th question by same. I understand, then, that you and your associates, having between the time of that purchase of the property and the organization of the new company actually expended about $130,000 or more of fresh money, including the $56,000 of profits you made upon the property, sold it to the new stock Co. in consideration of the $150,000 of stock to be issued to you as full-paid-up stock?

Answer. That is my understanding.

120th question by same. What improvements had been put upon the property between the time of your purchase and the conveyance of it to the new Co.?

Answer. The main hotel had been considerably improved, cottages had been repaired, and gas had been introduced and water works enlarged and improved; a steam laundry was put up and other valuable improvements made which I cannot now enumerate; also a large amount of new and handsome furniture was put in the hotel and cottages, beside the furniture purchased from Geo. L. Peyton & Co.

247 121st question by Judge H. H. Marshall. At what price did you purchase this property from the commissioners of the United States court?

Answer. $340,000.

122nd question by same. What did you sell it to the company for, or to the gentlemen who afterward made up the Co.?

Answer. By contract of Jan., 1880, I was to have in the neighborhood of $50,000 for a portion of the liens I held upon the property and which was sold to my associates, so that the property costs my associates and myself, at the outset, about $390,000.

123rd question by same. Did you take the obligation of these other gentlemen to you for that $50,000?

Answer. I took the guarantee of J. M. (N.) Camden for half of the amount and the guarantee of Geo. L. Peyton for one-fourth, the other one-fourth not being guaranteed.

124th question by same. How much of the $75 or $80,000 that was paid up in money was applied for the payment of the purchase-money of the property?

Answer. The only money paid to me on the vendor's lien was in

the fall of 1880, about $7 or $8,000, and in the fall of 1881 about $23,000, as well as I remember.

125th question by same. What was the cash payment to the court?

Answer. I don't remember.

126th question by same. Who made it?

Ans. It was made by Camden, Peyton, and myself, I believe.

127th question by same. Was it not made as a part of that $50,000 that was paid in?

248 Answer. I think it was.

128th question by same. Did it amount to $40,000?

—. The amount paid was not considerable for the reason that the most of it was coming to me as the lienholder, and I had obligated myself by the contracts of Jan., 1880, to give a long time for the payment of the purchase-money. I do not think the amount exceeded $15 or $16,000.

129th question by same. You have stated about the improvements to property and the purchase of furniture, &c., which you estimate at $130,000; was not the debt of Basshor & Co., created in 1880, for permanent improvements?

Answer. I think it was.

130th question by same. When was it paid?

Answer. Payments have been made from time to time.

131st question by same. Was it paid out of the money subscribed—the $75,000?

Answer. New work was given to them from time to time, so that it is impossible to say how much they were paid by the profits of the season of 1880.

132nd question by same. Did not Mr. Basshor present his claim at the end of the season of 1880, when you and the other parties (except Mr. Peyton) were willing to contribute money to discharge it, and when it was found that Mr. Peyton could not pay his share, and was not the note of the Co. given for it, endorsed by you individually?

Answer. I think that very likely. I have no distinct recollection as to Col. Peyton's inability to pay his share. I know the note of the Co. was given and endorsed by Camden and myself.

249 133rd question by same. Did not Camden agree to pay Matthews' share?

Answer. I cannot be positive.

134th question by same. Are there not now outstanding and unpaid large claims for the permanent improvement- done at the White Sulphur Springs since you sold to that Co.?

Answer. No such claims are outstanding, so far as I am aware, in the hands of the original holder, except the Bank of Lewisburg.

135th question by same. In other words, were these improvements of which you have spoken paid for by persons who put them there, except by borrowing money, which you still owe?

Answer. The improvements we made were in a large measure made from the profits of the season and money advanced by stockholders, but not entirely.

136th question by same. When you made the agreement of Jan., to which you have referred, did you not at the same time or about that time, to wit, on the 30th of Jan., 1880, make an agreement, of which the paper marked No. 22, now shown you, is a copy?

Answer. Yes, sir.

137th question by same. Does not that paper set forth the true state of facts?

Answer. I think it does.

138th question by same. Is J. N. Camden a practicing lawyer?

Answer. I understand he was, but is not now.

139th question by same. Did you know he followed the law business in the early part of his life, and then went into the log business?

Answer. I have never heard of that before.

250 140th question by same. Is he a practicing lawyer or has he done so for many years?

Answer. I don't think he has for many years.

Further examination of Mr. STUART by Judge H. H. MARSHALL, on Friday April 23rd, 1885:

141st question. Upon looking at the scrip book I find that you received in the aggregate certificates for 250 shares of stock on April 28th, 1882, and that on that same day J. P. Branch received certificates for 100 shares, and that on the next day, to wit, 29th of April, 1882, a certificate of stock was made out for J. P. Branch, signed by the president of the Co., H. M. Mathews, and the secretary, Jno. C. Wood; but the said certificate, as heretofore stated, has the names of the president and the secretary cut out of it, and the pieces of paper so cut out are pinned to the said certificate and the certificate itself pinned to a leaf in the scrip book. Please state all you know about John P. Branch's getting that certificate and how it comes to be in the condition which you now see it.

Answer. The certificate No. 22 for 250 shares was issued in conformity to the resolution of the board directing that such an amount of scrip should be delivered to J. P. Branch and a corresponding amount to myself, along with $50,000 of bonds to Mr. J. P. Branch and the same to myself. I was in Richmond at the time the bonds were prepared and received my share of bonds and stock, and I am quite confident that Mr. Branch received his on the same day that I received mine, or the next day. I know that I regarded this amount of stock and bonds as placed or taken by Mr. Branch and myself on the terms fixed by the board of directors and stockholders previously. My object then was to have the share of Mathews and Peyton placed in like manner, and I did not know until some time afterwards that Mr. Branch was disposed to treat the bonds as deposited with him as collateral security. I do not think

251 I knew about the return of this scrip No. 22 until since I commenced this deposition. It appears from the book that the scrip was regularly signed, and being cut out from the book and folded, I have no doubt that the scrip was delivered to Mr. Branch with the bonds on or about the 29th of April, 1882. As to who cut

the names out is only a matter of conjecture with me. I see no other evidence of cancellation than the cutting out of the names, and I see that no scrip was issued in lieu of it. When I did ascertain that Mr. Branch claimed to hold the bonds of the Co. as collateral instead of a permanent loan, I expressed very strong dissatisfaction, denying his right to so hold them and threatened to enjoin the sale of them until he promised that they should not be sacrificed. In regard to scrip No. 21 for 100 shares, I cannot state anything except what appears on the books. It was issued to Mr. J. P. Branch April 28th, 1882, and I find that that scrip is returned with the names cut out in the same manner as scrip No. 22, but that the names are not pinned to the scrip as in the case of No. 22. Endorsed on this scrip, No. 21, are these words: "Returned by J. P. Branch, who received therefor a similar certificate to J. W. Kerr." The handwriting endorsed on this certificate is not by any officer of the company and is not known to me. The names of the officers in both certificates (No. 21 & 22) were cut out by scissors or some sharp instrument, and evidently these two certificates have been folded together; when and by whom I do not know.

142nd question by same. Where was this scrip book when you gave receipts for the 250 shares you got on 28th of April, 1882?

Answer. I think it was at the Exchange hotel, where Gov. Mathews and Mr. Wood, the secretary, and myself were stopping.

143rd question by same. Do you know what then became of it and where it has been since?

Answer. I cannot say positively what then became of it.
252 I know that the record book containing the minutes of the stockholders and directors was left at the Merchants' National bank with Mr. Branch. I cannot say positively whether this book was with it or not. It may have been.

144th question by same. Are there any other certificates of stock in this scrip book cancelled? If so, state how they appear to have been cancelled.

Answer. There are other certificates of scrip cancelled and pasted back in the book. They are cancelled by tearing out, and not by cutting, a part of the officers' names.

145th question by same. Are all the certificates cancelled pasted into the book?

Answer. They are pasted at the end of the stub from which they were originally cut, except the two mentioned.

146th question by same. How are the two certificates Nos. 21 and 22 fastened back in the book?

Answer. They are fastened back with a pin, not pasted to the stub from which they were cut originally.

147th question by same. Was the certificate No. 22 ever returned to the Co. with the consent of the board of directors?

Answer. It was not.

148th question by same. Does it appear from the book that there was any transfer by Mr. Branch of the 100 shares of certificate No. 21 to John W. Kerr?

Answer. No, sir. There is a printed form on the back of it which has not been signed.

149th question by same. Was any order of the board agreeing to accept the return of that certificate and to issue one to J. W. Kerr in lieu thereof?

253 Answer. There was no such order.

150th question by same. Who are the present stockholders of the company?

Answer. They are the same, so far as I know, as the list furnished you in the preceding part of my deposition, except that the stock of Geo. L. Peyton of 375 shares has been sold to Harrison Phoebus and myself. If there are other changes, I do not recall them.

151st question by same. You stated yesterday that Mr. Camden and the other gentlemen associated with you were informed by Col. Peyton at the end of the season of 1880 that the profits of the season amounted to $56,000 or more. Did you investigate the books and accounts of the Co. for the purpose of testing the accuracy of your information, or for the purpose of finding out what was the exact condition of the Co. at that time in respect to its indebtedness and in respect to the profits of that season, or did you rely upon the statement made by Col. Peyton.

Answer. I did not examine the books, but relied upon Col. Peyton's statement.

152nd question by same. I see from the proceedings of the board of directors on Dec. 2nd, 1881, that the board declared a dividend out of the profits of the preceding season of 10 per cent., payable in certificates of stock. Were any such certificates ever issued?

Answer. They were not.

153rd — by same. I think you said yesterday that you did not know that these profits were for that year.

Answer. I don't know what they were.

154th question by same. Was there no statement of what they were produced before the board of directors before or at the time the dividend was declared?

254 Answer. I think not. We thought we had made it and I think the reason for declaring it was that we were going to admit new stockholders, and we thought it but fair that the then stockholders should have the benefit of the profits and earnings.

Further than this the deponent saith not.

(Signed) W. A. STUART.

Apr. 24, 1885.

Memorandum.

I file herewith two letters, one from Hon. E. H. Fitzhugh and one from T. Ellett, Esqr. and also a memorandum made by H. H. Marshall, Esqr. They explain themselves. I can only say I wrote the "agreement" referred to with the understanding that all parties agreed to it. I may have misapprehended it. The matter was not discussed in my presence. The suggestion was made and I was busy preparing the heading of the depositions; there were quite a num-

ber of persons in the room and I cannot now be positive who suggested it even. I heard no objections thereto. Nor can I say who were present when I wrote it, as suggested. Had I supposed there would be objection or it was not fully agreed to, of course it would not have appeared as it does.

Respectfully,

D. C. GALLAHER,
Master Com'r.

"RICHMOND, VA., *May* 14, 1885.

D. C. Gallaher, Esq., Charleston, Kan., W. Va.

DEAR SIR: On my return home, after an absence of some days, I found a copy of the deposition of W. A. Stuart, Peyton, &c., taken by you in Ap'l last in the case of Stuart, &c., *v.* Greenbrier W. S. S. Co.

255 I was surprised to see at the head of Stuart's deposition a note that it was agreed to by counsel and parties that those depositions, or a copy thereof, might be used in the suit of Hodges & Bro. against Greenbrier W. S. S. Co. I did not read the beginning of the paper, supposing it was merely the formal heading of the deposition. I understand that the counsel for the Greenbrier W. S. S. Co. and Mr. Stuart did agree orally that the depositions might be read in the Hodges case. I was requested, as the counsel for the trustees, Carrington & Gordon, to consent, but I replied that I must see my clients, and declined to consent. I did see one of them, Maj. Carrington, shortly afterwards, and he declined, and afterwards Maj. C. told me he & Gordon had both declined. It is a mistake to suppose that I consented. When applied to, I refused to consent, wishing then to see Carrington & Gordon, and after ascertaining their views never agreed, as counsel for them, that the depositions might be read in the Hodges case.

After the com'r had commenced taking the depositions, and while engaged in taking that of Mr. Stuart, and after I had declined to consent, and perhaps in consequence of my refusal, Mr. Ellett, one of the counsel in the Hodges case, as I am informed, met Messrs. Carrington & Gordon and urged them to consent, but both refused.

I see further that it is reported as having been agreed by parties and counsel, at the close of Peyton's deposition, that all floating debts of the company shall be regarded as proved in the case of Hodges Brothers, for, &c., against the company. The evidence to sustain said claims in said causes shall be regarded as evidence in the other, and *vice versa*.

I never agreed, as counsel for the trustees, that this might be done, and I am informed by Mess. Carrington & Gordon that they did not agree to it.

Will you do me the favor to return this letter with your report, or, if you have returned the report, make a special return

256 of this letter to the court.

Yours very truly,

(Signed) EDWARD H. FITZHUGH,
Counsel for Trustees."

"RICHMOND, VA., *May* 15, 1885.

D. C. Gallaher, Esq.

DEAR SIR: Judge Edw. H. Fitzhugh yesterday evening showed me a copy of a letter which he had just written to you in reference to the agreement by counsel and parties that the depositions, or a copy thereof, taken by you in the case of Stuart, &c., *vs.* Greenbrier White S. S. Co. might be used in the case of Hodges Bros. *vs.* The Greenbrier W. S. S. Co., now pending in the district court of the U. S. for the dist. of W. Va. We talked the matter over and as our recollections of the facts differed considerably we thought it better that each should write to you giving our remembrance of what transpired. My recollection is as follows: Some time prior to the taking of said depositions, and even before the time for taking the same had been fixed by you, I, upon the suggestion of Judge Bond, saw Major Dooley, counsel for the company, and Judge Fitzhugh, counsel for the trustees, W. W. Gordon and Isaac H. Carrington, and each stated that they could see no objection to agreeing that the depositions to be taken before you should be used in both of the abovementioned suits, and when I conferred with Judge Fitzhugh, Major Carrington, one of the trustees, was present and himself said that he could see no objection to the agreement. Stuart expressed his wishes in the matter by letter. Judge Marshall and I had a conference on the morning that you commenced said depositions, before going to Boulware's office, the result of which was that I went up to Boulware's office to enquire whether or not all parties would consent to
257 the use of the depositions in both suits, and Judge Fitzhugh and Mr. Stuart consented. Major Dooley not having come in, I went to his office, where I informed him that the commissioner was about ready to go on with the deposition and asked him if he would agree that they should be used in both suits, and he replied that he would so agree. I then called on Judge Marshall, who would not go to Boulware's office until their consent had been obtained, told him that all parties consented, and we went together before the commissioner, and here again it was asked if all parties would agree to the use of the depositions about to be taken in both suits, and that, too, before the depositions were commenced, and all parties consented, when the com'r set forth the facts recorded at the beginning of the depositions in reference to said agreement.

Some half hour or hour thereafter Judge Fitzhugh called me to one side and remarked, 'I don't see that this consent to use these depositions in both suits can injuriously affect my clients, but I am going over to have a talk with them after awhile,' and about 20 minutes afterwards, I think, left the room. He afterwards returned, but made no allusion to the consent and gave no intimation that he wished to withdraw his consent, given as counsel for the trustees, even though it had then been in his power to withdraw it. We maintain that it was then too late and he could not have done so if he had desired.

About three hours after the depositions had commenced I called on Major Carrington, according to appointment, to see him in refer-

ence to another suit in which we were opposing counsel, and while discussing this matter Col. Gordon came in, when Major Carrington remarked, 'Gordon's coming reminds me, what about this agreement to use the depositions now being taken in the White Sulphur matter in both suits.' The subject was then discussed for some time and then dropped. I learned from them that they did not think they should consent, and expected during the rest of the time the com'r was taking the depositions, some three days, that they would
258 endeavor to withdraw their consent. This, however, they never did, though Judge Fitzhugh was frequently in attendance upon the com'r, and Major Carrington, during the second day, called and read over the depositions which had been taken, held consultations with counsel, &c.

Please do me the favor to do with this letter as you do with that of Judge Fitzhugh, and oblige,

Yours very truly,

(Signed) TAZEWELL ELLETT,
Of Counsel for Creditors."

Mem's for Com'r Gallaher, who will please return this with Mr. Ellett's letter.

H. H. M.

I was very much pleased, upon reading a letter from Mr. Stuart to Col. Peyton, to see that he suggested that Col. P.'s deposition should be taken to be read in both of the suits, to wit, that of Stuart for, &c., *vs.* The G. W. S. S. Co., pending in the U. S. circuit court for W. Va., and that of Hodges Bros. *vs.* the same, pending in the U. S. district court for W. Va., and when the day arrived for taking the depositions I told my associate, Mr. Ellett, to get all the parties to co-sent that the depositions should be read in both cases. He did so, and after we went into the room where the depositions were to be taken he informed me that all the parties had consented, to wit, Mr. Stuart, for himself; Mr. Dooley, for the G. W. S. S. Co., and Judge Fitzhugh, for the trustees, Carrington and Gordon; and I accordingly dictated to the com'r (Mr. Stuart being near me and Judge Fitzhugh in the room) the heading of the deposition, in which this consent was set forth, and the depositions were commenced and continued from day to day till completed. During the time Judge Fitzhugh was sometimes present, and Major Carrington, one of the trustees, was sometimes present, probably as much as for several hours. Mr. R. Pegram was also present, but he said at the be-
259 ginning that he would take no part in taking the depositions and was merely a spectator, acting, however, as we understood, for Mr. Branch. I never heard of any objection on the part of the trustees until several days after the depositions had been closed, but believed from what Mr. Ellett told me, and from the conduct of Judge Fitzhugh and Carrington, that there was no reason whatever to doubt that the consent had been given, and that the caption of the depositions set forth correctly the fact. I said nothing whatever personally to Judge F. on the subject, but I know that

he was present when I dictated the caption to the com'r. Whether he heard me do so or not I cannot assert. After the caption was written, the com'r read it aloud and I heard no objection to it. Of course, I do not pretend to say that Judge F. heard it read. We could easily have given the trustees notice, but the consent made it unnecessary to do so.

(Signed) H. H. MARSHALL."

EXHIBIT J. P. B. "B."

Jno. P. Branch. Fred. R. Scott. Geo. A. Cunningham.

Thos. Branch & Co., bankers & commission merchants.

Dictated to stenographer by J. P. B.

RICHMOND, VA., *April 14th*, 1884.

Mr. D. C. Gallaher, Charleston, W. Va.

DEAR SIR: Your favor of the 8th received; also the notes and $500 bond returned.

The collateral for note No. 3 is 30 bonds of $500 each, Nos. 141 to 170; *not* (note) No. 2, 30 bonds of $500 each, Nos. 201–230; note No. 1, 50 bonds of $500 each, Nos. 171 to 200 and 231 to 250.

Yours truly, THOS. BRANCH & CO.

260 EXHIBIT J. P. B. "A."

Thos. Branch & Co., bankers & commission merchants.

RICHMOND, VA., *April 4th*, 1884.

Mr. D. C. Gallaher, Charleston, W. Va.

DEAR SIR: Your favor of the 2nd just received. I called to see you with the notes after they were returned by Mr. Ruffner, but I found that you had left.

I send you by express to-day the three notes of the White Sulphur Springs Co., one—marked No. 1, belongs to the Merchants' Nat'l bank—for which they hold as collateral $25,000 of the White Sulphur Springs Co.'s bonds. The notes Nos. 2 and 3 are owned by Thos. Branch & Co., for which they hold $30,000 of the bonds as collateral security. I also send one of the bonds as a sample, which I presume is all that is necessary.

Very truly yours,

(Signed) JOHN P. BRANCH.

No. 170. $500. Coupon 15th Sept., 1882.

JOHN W. KERR, being duly sworn, deposes and says:

1st question by Tazewell Ellett, Esq. Please state your age, residence, and occupation.

Answer. I am 45 years old; I reside in Richmond, Va., and am book-keeper at the Merchants' National bank.

2nd by same. Are you the owner of any of the stock of the Greenbrier White Sulphur Springs Company? If so, state when
261 and where you purchased the same and what you paid therefor.

Answer. I own one hundred shares of said stock; in 1882, latter part of April. I bought it from Thos. Branch & Co., at par, here in Richmond, Va., at their office.

3rd by same. State how the stock was transferred to you and how you paid for it.

Answer. I suppose it was transferred like any other stock would be. They hold my note for it, with the scrip as collateral. I thought it was a good thing and bought it.

And further deponent saith not.

(Signed) JNO. W. KERR.

EXHIBIT D. F. M.

ST. ALBANS, W. VA., *M'ch* 16, 1885.

Greenbrier White Sul. Sp'gs Co., bought of Mohler & Sons, manufacturers and dealers in lumber.

1882.

Aug. 7. To balance due on building material furnished for hotel erected at the White Sulphur Springs, 1882, subject to interest ---------- $413 25

DAN'L F. MOHLER.

[SEAL.] Sworn and subscribed to before me this 16th day of March, 1885.

(Signed) RICHARD H. LEE,
Notary Public, Kan. Co., W. Va.

262 Deposition of Daniel F. Mohler, taken before me, to be read in case of W. A. Stuart and others against The Greenbrier White Sulphur Springs Company and others, pending in U. S. circuit court, in equity, and taken at Charleston, W. Va., March 27th, 1885.

DANIEL F. MOHLER, being first duly sworn, deposes and says as follows:

1st quest. by Com'r Gallaher. Please state what claims, if any, you own or have against the defendant company in this suit and all about it.

Answer. I here hand you an account, marked "D. F. M.," which is for $413.25, with int. from Aug. 7, 1882; said account is for lumber and material furnished by Mohler & Sons, of which firm I am a partner, and the said company, along in Aug., 1882, and at the date named in the account. I know personally that it was furnished upon order of the said company, and that the prices charged were the usual and reasonable prices, and the account is wholly due and un-

paid. I myself measured the most, — fact, all of it, and know the account to be correct. This was furnished directly to the company.

And further deponent saith not.

(Signed) DAN'L F. MOHLER.

"G. P."

Agreement made this 30th day of January, 1880, between Geo. L. Peyton, of the one part, and W. A. Stuart, of the other part, witnesseth:

That the parties hereto have joined in an agreement with J. D. Camden, of even date with this agreement, looking to and providing for the purchase of the White Sulphur Springs, in Greenbrier county, West Virginia, in the proportions of one-half to said Camden and a fourth each to the said Payton & Stuart; and
263 whereas the said Stuart, to enable said Peyton to unite in the purchase of said springs, hath postponed payments which would be due him as a creditor under the sale for many years, and hath agreed to advance for said Peyton the one-fourth of fifty thousand dollars, the amount necessary to be paid in the ensuing season: Now, it is agreed by said Peyton that in consideration of the premises the said Stuart shall be exonerated by him and held free of accountability as to the salary which shall be paid to the superintendent or chief manager of said springs, after the contemplated purchase, until such time as the said Payton shall reimburse said Stuart for all advancements made for him on said purchase, or for the improvement and furnishing the property, or on the obligations mentioned in the agreement aforesaid with J. D. (N.) Camden and until such time as said Stuart's debts referred to in *in* said agreement (except the debt of two hundred thousand dollars) are paid; and the said Peyton moreover agrees to pay six per cent. interest annually on all advances made for him, and that such advances are to be regarded as a lien upon his interest in the property aforesaid until refunded, and that said Stuart shall have any scrip of the company to which said Peyton might be entitled by reason of such advancements; such scrip to be held as collateral security until the advancements are refunded, and any dividends thereon to be paid said Stuart and credited against such advancements and then turned over to said Peyton.

Witness following signatures and seals:

(Signed) GEO. L. PEYTON. [SEAL.]
W. A. STUART. [SEAL.]

Addendum.

It being necessary for Geo. L. Peyton to contribute five thousand dollars as his share of twenty thousand dollars of indebtedness of the Greenbrier White Sulphur Springs Company, it is agreed between him and W. A. Stuart that said Stuart will raise said amount for
264 said Peyton, or his paper, on the same terms and conditions as are set forth in this agreement above, and that henceforth

no further obligations shall be upon said Stuart to raise money or make advances for said Peyton.

Witness the following signatures and seals, December 3rd, 1880, in duplicate:

(Signed) GEO. L. PEYTON. [SEAL.]
W. A. STUART. [SEAL.]

A correct copy of Exhibit "P." 1, filed with deposition of Geo. L. Peyton in the case of Effinger and *als. vs.* W. A Stuart and *als.*

R. E. KIRMEY, *Clerk.*

"G. P." May 20th, 1884. Sheffey & Bumgardner.

Copy of paper referred to by G. L. Peyton in his deposition in suit of W. A. Stuart and *als. vs.* G. W. S. Spr'gs Co. and *als.*, in U. S. cir. c't, W. Va.

D. C. GALLAHER, *Com'r.*

Depositon of Geo. L. Peyton, Taken in the Same Causes.

Present: Same counsel and parties as on yesterday—H. H. Marshall, attorney and counsel for the White Sulphur Springs Co. and T. Ellett for the creditors.

Being duly sworn, deposes and says:

1st question by H. H. Marshall. Are you Geo. L. Peyton referred to by Mr. Stuart in his deposition just given?

Answer. I am.

2nd question by same. Have you been present and have you heard the answers to the various questions propounded to him by Mr. Dooley and myself?

Answer. I have been present and have heard them all.

3rd question by same. Is the book called the minute book of the Greenbrier White Sulphur Springs Co. of W. Va., and
265 the scrip book shown to Mr. Stuart and now exhibited to you, the real book of the said Co., as stated by Mr. Stuart?

Answer. I recognize that as the same.

4th question by same. Do you know of any other book containing any minutes of the proceedings of the stockholders or the board of directors of the said Co., other than these to be found in the minutes aforesaid?

Answer. I know of no others.

5th question by same. Please state all you know in regard to any agreement on the part of J. P. Branch to take any amount of the mortgage bonds that have been mentioned by Mr. Stuart and of the capital stock of the company, and at what rates he was to take them, and how much he was to take—that is, how much of bonds and at what price, and how much stock and at what price.

Answer. When the board of directors ordered these bonds to be issued under the deed of trust, to be sold with the stock of the Co., Mr. J. P. Branch and W. A. Stuart, each of whom agreed to take $50,000 of bonds at 50 cents *in* the dollar and $25,000 of stock at

par, I remember distinctly when Gov. Mathews and I complained and said we would not be able to take any of these bonds and stock, that Mr. Branch said, if we would waive our right to take them, that he would himself buy them or undertake to have them placed.

6th question by same. At that time did not J. P. Branch own the shares that had been held by Lancaster and others?

Answer. I understood he had disposed of some of that stock, but did not know what portion of it.

7th question by same. Who were at that time all the stockholders of the Co.?

266 Answer. J. P. Branch, Alex. F. Mathews, H. M. Mathews, R. R. Bridges, and meself, stockholders and directors.

8th question by same. It appears that the first proceedings of the board of directors in regard to the issue of the bonds in respect to the mortgage was at a meeting held in Richmond on Feb. 9th, 1882, and that there were present H. M. Mathews, W. A. Stuart, J. P. Branch, R. R. Bridges, G. L. Peyton, and Alex. F. Matthews, directors. J. P. Branch at that time disposed of part of the stock that he had purchased from Lancaster, did he not?

Answer. I understood that he did.

9th question by same. Do you know whether subsequent to what occurred at the time Mr. Branch and Mr. Stuart each agreed to take $50,000 of bonds at 50 cents on the dollar and $25,000 of stock at par if the bonds to the amount of $50,000 and stock to the amount of $25,000 was delivered to Mr. Branch?

Answer. To my knowledge, I don't know that it was, but understood so.

10th question by same. Does it not appear from the scrip book that there was a certificate for 250 shares made out in the name of John P. Branch and signed by H. M. Mathews, dated 29th of April, 1882?

Answer. It does.

11th question by same. Do you know of any authority by resolution of the board of directors or of the stockholders formally given or informally given to Mr. Branch or any other person to borrow money upon the faith of any of these mortgage bonds or to deposit them as collateral security for any debt of the Co., or in any way to hypothecate them? If so, state it.

Answer. There was none that I know of.

267 12th question by same. It appears that 180 of these bonds of $500 each were deposited with Mr. A. F. Mathews. Please state how they come to be so deposited and who did it.

Answer. They were placed in Mr. Mathews' hands by the president of the Co., H. M. Mathews, to indemnify W. A. Stuart, H. M. Mathews, and myself, as joint endorsers of the White Sulphur Springs Co.

13th question by same. Did any members of the board of directors know of that fact until after the bonds had been so deposited?

Answer. They did not. In other words, no one knew of it except Mr. Mathews and myself. Mr. Stuart nor the other directors had any knowledge of it.

14th question by same. As I understand, then, Mr. Mathews and yourself took the liberty, without authority from the board of directors offered in meeting or by consulting them separately, to deposit these bonds with A. F. Mathews?

Answer. You understand me correctly.

15th question by same. Where did you and Mr. Mathews get these bonds from?

Answer. I supposed H. M. Mathews, as president of the Co., had a right to keep them in his possession. I think he kept them in his safe.

16th question by same. Mr. Stuart, according to his written agreement with you, undertook to carry your 375 shares of stock originally subscribed. What became of the scrip that was issued?

Answer. It was delivered to Mr. Stuart, to be held by him as collateral security for the money he had advanced until he was fully reimbursed.

268 17th question by same. How much money did he advance for you on account of your stock?

Answer. There was $12,500, then afterwards $5,000 more, he advanced for me for the indebtedness of the Co., which was paid on account of my stock.

18th question by same. When these advancements were made to you, did you give your note to Mr. Stuart for the amount?

Answer. Yes; a short time afterwards I recollect that Mr. Stuart requested me to give him my note for the amount.

19th question by same. Were these notes renewed from time to time?

Answer. Yes, sir.

20th question by same. Did he ever advance any more for you?

Answer. No, sir.

21st question by same. The whole amount of your subscription was $37,000, was it not?

Answer. Yes, sir.

22nd question by same. Of which $17,500 was paid?

Answer. Yes, sir.

23rd question by same. When any payments were made by the stockholders were you not required to pay the same amount?

Answer. Yes, sir.

24th question by same. Mr. Stuart agreed to do that for you, did he not?

Answer. No, sir; he only agreed to advance to the amount of $17,500; afterward I had no claim.

25th question by same. Did you ever pay any more?

Answer. No, sir.

269 26th question by same. Do you know whether H. M. Mathews ever paid any more?

Answer. I don't think he paid as much.

27th question by same. Do you know if Camden ever paid any more?

Answer. I do not.

28th question by same. How long was Mr. Camden and W. P. Thompson, who jointly owned 375 shares, connected with this Co.?

Answer. About a year.

29th question by same. You have stated that they were connected with it for about one year. How long after the organization of the Co., which was Dec. 29th, 1880, before Camden sold out?

Answer. I think he sold out in the spring of 1881.

30th question bey same. How long did Lancaster stay in, and who purchased him out?

Answer. I think he staid in until about 1881. J. P. Branch bought him out.

31st question by same. Do you know upon what terms Camden sold to Lancaster?

Answer. I think he sold out at the actual cost, which was, I think, about $17,500.

32nd question by same. Do you know what Lancaster sold out for?

Answer I think about $20,000.

33rd question by same. It has been stated that the profits of 1880 were estimated by you at about $56,000. Were these profits ascertained after taking all the expenditures made by the Co. out of the proceeds of the season in payment of the debts contracted
270 for carrying on the operations of the Co. during that season, or how?

Answer. The balance-sheet was made out by the book-keeper, and showed a profit of $56,000 at the end of the season. None of the expenditures for repairs and improvements were included in it.

34th question by same. You had apparently a profit of $56,000 at the end of the season, according to the balance-sheet. Was there or not $56,000?

Answer. There was not.

35th question by same. How much was there?

Answer. The books of the Co. will show how much was taken in and what disposition was made of it.

36th question by same. Was not the Co. at the end of the season of 1880 unable to pay its outstanding liabilities?

—. That was the condition of the Co.

37th question by same. In other words, did the Co. have any cash on hand at the — of the season of any consequence?

Answer. Very little, if any.

38th question by same. What was the indebtedness of the Co. remaining unsatisfied at the end of the season of 1880, not including, however, the purchase-money agreed to be paid to Mr. Stuart?

Answer. There was a considerable amount, but cannot state accurately.

39th question by same. Does not some of that debt, in one form or another—that is, in the form of renewed notes—still remain unpaid?

Answer. I think so. That was the condition of affairs at the end of my connection with the Co., in November, 1882.

271 40th question by same. When did the Co. fail?

Answer. At the close of the season of 1882.

41st question by same. Did it not have great difficulty in raising money enough at the close of the season of 1882 to pay the help it had employed for the season of 1882?

Answer. That was the condition of the Co.; and I remember that I borrowed money on my own individual note to pay the help.

42nd question by same. Did not the insurance upon the property remain unpaid, and did not Mr. Stuart subsequently pay it himself?

Answer. It was not paid by the Co. I understood Mr. Stuart paid it.

43rd question by same. What were the profits for the year 1881, as near as you can give it according to your books?

Answer. My recollection is it was less than $10,000.

44th question by same. What were the profits for the year 1882?

Answer. I never saw a balance-sheet. It was not completed when I sold out, in November, 1882.

45th question by same. Have you not been connected with the management and operation of the White Sulphur Springs for a number of years, and cannot you tell pretty well from your observation during a season whether it is a profitable or unprofitable one?

Answer. I can form a correct opinion.

46th question by same. What did you consider was the character of the season of 1882?

Answer. I think it showed very poor results.

272 47th question by same. Did not the indebtedness of the Co. increase every year—1880, '81, and '82, up to the time it failed?

Answer. There was an increase of debt.

48th question by same. In any other respects than that to which I have already called your attention?

Answer. No, sir.

49th question by same. I understand that your memory is about the same as Mr. Stuart's—good, is that so?

Answer. I think so.

50th question by same. Please give us an account of how the Co., involved as it was, undertook to construct a lake and to prepare a race-course and to make the Grant purchase—when it was made and by whom.

Answer. These improvements that you mention were ordered by the board of directors. Referring to the minutes of the board of directors, page- 37 and 38, Feb. 9th, 1882, I find the following order: "The board then ordered a porch to be constructed on two sides of the parlor, at a cost not exceeding $700, and that a lake be made on the Beauregard farm, and a race track on the meadows of Howard's creek, the first to cost not over $1,000 and the 2nd not to exceed $2,500." I was the only one to object to this improvement. I don't know what arrangement they had to meet the contracts.

51st question by same. Have they been paid for?

Answer. At the end of my connection with the company they were not.

52nd question by same. None of them?

273 Answer. There might have been some part of them.

53rd question by same. What payment was made on the Grant purchase?

Answer. I think $7,000.

54th question by same. What was the whole purchase?

Answer. $25,000.

55th question by same. It was on the Grant place they undertook to build the lake?

Answer. It was.

56th question by same. What did that lake cost?

Answer. I think it cost between $4,000 and $5,000.

57th question by same. That is the price they agreed to pay for it, is it not?

Answer. We agreed to pay its cost, and it was about $4,000.00 or $5,000.00.

58th question by same. It has not been paid for, has it?

Answer. I think it has been. I think it was paid before my leaving the Co. The race-course was not paid for at the end of my connection with the Co.

59th question by same. What did the race-course cost?

Answer. About $12,000, I think, including the stabling.

60th question by same. Who did incur these heavy expenditures in making race-track and other things?

Answer. The president of the Co., H. M. Mathews.

274 Continuation of deposition of GEO. L. PEYTON, on Friday, April 24th, 1885, by Judge H. H. MARSHALL:

61st question by same. Will you state, if you know, if R. A. Lancaster was fully informed as to the condition of the Co. at the time of the purchase of the interests of Camden and Thompson? That is, do you know how much money had been paid in upon the capital stock of $150,000?

Answer. That is my impression; indeed, I am satisfied he was fully apprised of the financial condition of the Co. at the time he bought of J. M. (N) Camden and Mr. Thompson.

62nd question by same. What was the indebtedness of the Co., as near as you can tell, at the end of the season of 1882?

Answer. At the end of my connection with the Co., in Nov., 1882, the floating debt, in the aggregate, amounted to over $200,000.

63rd question by same. Did that include the debt of Mr. Stuart for the purchase of the property?

Answer. It did not.

64th question by same. Did it include the Grant, Pedikin (Peterkin) debt?

Answer. It did.

65th question by same. Mr. Stuart has stated that you informed the parties interested that the profits for the year 1880 amounted to $56,000 or more; please state whether you made any examination into the books of the company, so as to ascertain for youself

what the amount of profit was, or did you rely simply upon the balance-sheet made out by the book-keeper.

Answer. I have never made any examination of the books of the Co. I relied entirely upon the balance-sheet made by the book-keeper, which showed a profit of $56,000

275 66th question by same. Was there any investigation made by any of the directors, so far as you know, of the books and transactions of the Co., so as to ascertain how that balance-sheet was made out, and whether it was correct or not?

Answer. To my knowledge, no member of the Co. ever examined the books of the Co.

67th question by same. You have stated that Gov. Mathews, the president of the Co., and yourself had delivered to Alex. F. Mathews 180 of the mortgage bonds of the Co. as collateral security for certain note upon which Mathews, Stuart, and yourself were joint endorsers for the Co. for these debts, for which you deposited these bonds as collateral security. Were these debts in existence before you made the deposit?

Answer. The debts in question had been in existence some time before the deposit. The bonds were placed there by the president of the Co. to protect myself and the president, H. M. Mathews, and W. A. Stuart as joint endorsers of the Co. Mr. Stuart had no knowledge of their being put there for that purpose until some time afterward.

68th question by same. Did he approve or complain of it?

Answer. He said it was a matter to be looked into, as to whether we had a right to do it or not, but it was a very proper protection if we had the right to put them there.

69th question by same. Are the claims of James Bates, of Baltimore, being an account of $69.33, and Warner Moore, of Richmond, being an account of $143.90, against the company, correct?

Answer. The company owed them at the end of my connection with it, in 1882, and I believe they are. I know when I ceased to be connected with the company, in November, 1882, it was indebted to Mr. Bates and Mr. Moore. While I don't know certainly,

276 I believe the amounts of the accounts are as stated.

It is agreed by parties and by counsel that all the floating debts against the Co. which have been proved in the suit of Stuart, for, &c., *vs.* The Greenbrier White Sulphur Springs Co. shall be regarded as proved in the case of Hodges Bros., for, &c., against the said Co. The evidence to sustain said claims in said causes shall be regarded as evidence in the other, and *vice versa*.

Further than this deponent saith not.

(Signed) GEO. L. PEYTON.

It is agreed that the commissioner may certify this deposition without the signature of Geo. L. Peyton, but the said Peyton is to sign it hereafter.

277 And on another day, to wit, on the 27th day of June, 1885, the following order was made and entered of record, to wit:

"WILLIAM A. STUART and Others, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS, &c. } In Equity.

This day came the creditors of said defendant company by Tazewell Ellett, Esquire, their attorney, and filed exceptions to the report of Com'r Gallaher in this case;" which exceptions are in words and figures following, to wit:

In the United States Circuit Court for the District of West Virginia, Fourth Judicial Circuit.

WM. A. STUART, FOR, &c.,
vs.
THE GREENBRIER W. S. S. Co., &c.

Exceptions to Commissioner Gallaher's report of May 30th, 1885, by creditors other than claimants of the mortgage bonds and those creditors who claim to hold such bonds as collateral security for their debts or claims.

1. The said creditors except to that part of said report which sets forth that there *was* outstanding and due 400 bonds of the defendant company for $500.00 each, which constitute, by reason of the deed of the 6th April, 1882, a lien upon the property conveyed by said deed; and exceptants insist that there is not one single one of the said bonds which is a lien upon the property conveyed by said deed, for the following reasons:

1st. At its inception said deed was void and of no effect as to any bonds which came to the possession of W. A. Stuart and John P. Branch, for the simple reason that the board of directors, of which they were conspicuous and active members, resolved that the stockholders (and they were all stockholders) should have the right to take bonds issued under said deed at the rate of fifty cents *in*
278 the dollar, taking at the same time stock to the extent of one-half the bonds so taken at par, and at the same meeting which authorized the execution of the deed and the sale of the stock and bonds upon the terms aforesaid the privilege of taking said bonds and stock at said price was reserved to the stockholders of the company, and only upon their failing to avail themselves of said privilege could the same be sold to other parties; and this arrangement was made and agreed to while the company was heavily in debt and large sums of money were due to the creditors, who now except to said report; and therefore the bonds held by Stuart do not and cannot legally constitute a lien upon said property so conveyed as aforesaid. He had no right to make any such agreement or arrangement or to carry it out.

The same is true of the bonds held by John P. Branch. His efforts to place a portion of them with the Merchants' National bank and the other part with Thomas Branch & Co. are futile.

He had full knowledge of this illegality and so had Thos. Branch & Co., of which firm he is and was the leading member; and so had the Merchants' National bank, of which he was and is the president.

At the time this effort was made to make a deed to secure bonds which the directors were to take at 50 cents *in* the dollar, and to pledge the property of the defendant company to secure said bonds for an amount double what the company received for them, the debts of the company to other persons remained unpaid and unprovided for. Exceptants maintain that this was illegal and unjust, and such proceedings will be treated by a court of equity as null and void.

The effort to get rid of the subscription for the 250 shares of stock on the part of John P. Branch is futile, as reported by Commissioner Gallaher. The effort to place and use said bonds as collateral with Thos. Branch & Co. and the Merchants' National bank is likewise so, for there never was any authority to use any of said bonds as collateral given by said defendant company, and it was, more-
279 over, directly contrary to the terms of Mr. Branch's contract, which was itself illegal.

2nd. The bonds placed with A. F. Mathews were not placed with him by any lawful authority, of which he had full notice, he being at the time one of the directors of said company. Two of the directors, Mathews and Peyton, finding these bonds in the safe of the company, without consultation with or authority from the board of directors, deposited them with said Mathews, who was also an officer of the Lewisburg bank; said Mathews now claims that they were deposited as collateral security for the debt of the defendant company to said Bank of Lewisburg, which debt is amply secured by endorsers upon the notes held by it, the two directors who delivered said bonds to said Mathews being two of said endorsers. Exceptants insist that the report is wrong, and that the evidence of Stuart and Peyton and the proceedings of the said company, which were in evidence before the comm'r, show beyond a doubt that not one single bond is now outstanding so as to constitute a lien upon the property mentioned in said deed of April 6th, 1882.

II. The exceptants also except to the failure of the com'r to file with his report the minute book containing the proceedings, both of the stockholders and of the directors of said company, and the scrip book of the said company, said two books having been produced before him and, taken in connection with the evidence of Stuart and Peyton, taken on the 21st April, 1885, and successive days thereafter, until completed, contain important evidence, establishing beyond question the position taken by the exceptants in their exceptions.

III. The exceptants also except to that part of said comm'r's report which relates to the payment of the subscription of $150,000 of the capital stock of said company originally subscribed, the evidence showing clearly that even if any part of said subscrip-
280 tion was ever legally paid up, not more than $70,000 or $75,000

was ever so paid. Exceptants deem it necessary only to call the attention of the court to the very distinct testimony of Stuart and Peyton, and to the proceedings of the board of directors, as conclusively showing that from $75,000 to $80,000 of this subscription remains unpaid and still due.

IV. The exceptants also except to the fact that John P. Branch is not clearly and distinctly charged with the subscription money for 250 shares of stock taken at one time and 100 shares taken at another; that for the 100 shares is correctly reported as due from him; the evidence before the com'r is conclusive as to both.

V. Exceptants except further to the report, in this: that in treating of the "vendor's lien of W. A. Stuart" it does not state what the deeds show—that the two acres of land near the depot was entirely exempted by Stuart and wife from his lien as vendor.

VI. Exceptants further except to said com'r's report for the reason that the decree of reference required said com'r "to report fully by whom the bonds issued, &c., * * * are held, and on what consideration they were issued by the Greenbrier White Sulphur Springs Company; and report further what amounts are due from the present or former owners of the stock of said company on account of their subscriptions to stock; for what amounts such present or former owners of such stock are liable by reason of their said ownership;" and said com'r has failed to fully comply with said requirements, either as to the bonds or stock, in any particular.

VII. Exceptants further except to that part of said com'r's report in which he reports the eleven judgments against the G. W. S. S. Co. a prior lien on the two acres exempted as above mentioned, and gives them a general priority to the claims of exceptants, for the com'r's report itself shows that all of these judgments were obtained subsequent to the appointment of a receiver for the defendant
281 company by this court, and in disregard of and contrary to the order of this court.

VIII. Exceptants further except to those parts of said report which relate to the right of the said Stuart and Branch to offset what they owe the defendant company on account of their subscription to its stock by what the defendant company may owe them respectively, for a court of equity looks upon such unpaid subscriptions as an equitable fund for the benefit of the creditors of the corporation, to be ratably distributed between them, and will not permit said Stuart and Branch to offset said indebtedness by what the company may owe them, but will require them to pay up their subscriptions and only permit them to have their ratable share of such fund as creditors of the defendant company.

IX. Exceptants also except to said report for the reason that the sums of money, principal and interest, reported as due to W. A. Stuart on account of the purchase of the property sold by him to said defendant company and stated to be a lien upon said property is in excess of the real amount actually due and owing from said company to said Stuart on account of said purchase.

X. Exceptants also except to said report for all errors apparent

upon the face thereof and contrary to the evidence in the record taken by said commissioner and the exhibits filed therewith.

(Signed) H. H. MARSHALL,
TAZEWELL ELLETT,
Of Counsel for Exceptants.

June 24th, 1885.

282 And on another day, to wit, on the 29th day of June, 1885, the following order was made and entered of record, to wit:

W. A. STUART and Others, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, &c. } In Equity.

This day came again the creditors of said defendant company, by Tazewell Ellett, Esquire, their attorney, and presented to the court additional exceptions to the report of Master Commissioner Gallaher, which, on their motion, are filed herein.

The exceptions referred to in the foregoing order are in words and figures following, to wit:

W. A. STUART, &c.,
vs.
THE GREENBRIER W. S. S. Co., &c.

I beg leave to submit a further exception to Commissioner Gallaher's report, which I am constrained to believe would be unnecessary had I time to confer with the commissioner, and simply file it now that it may come within the technical rule requiring exceptions to be made within one month.

I except to that part of said report which relates to the Phoebus account, for the reason that when the commissioner was in Richmond I notified him that important and material testimony concerning the points at issue therein had just been discovered, and he promised that as the Phoebus account was not essential to a decree for sale, it being a collateral matter, that he would defer his report thereon until the depositions could be taken. I thereupon proceeded to make arrangement- to take depositions concerning said evidence in New Orleans, Louisiana, and now ask that the settlement of the Phoebus account and the issues therein involved be recommitted.

Doubtless the commissioner, when he recalls these facts,
283 will himself join in this request.

(Signed) TAZEWELL ELLETT,
Of Counsel for Exceptants.

And on another day, to wit, on the 3rd day of September, 1885, the following order was made and entered of record, to wit:

WILLIAM A. STUART, Who Sues, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others. } In Equity.

This day came William Knabe & Co., by Tazewell Ellett, Esquire, their counsel, and presented their petition to the undersigned, one of the judges of this court, praying leave to file the same; upon consideration whereof it is ordered that the same be here filed, and leave is granted said petitioners to sue out process against said defendants named in said petition.

The petition referred to in the foregoing order is in words and figures as follows, to wit:

284 Copy.

In the United States Circuit Court for the District of West Virginia, Fourth Judicial Circuit.

WM. A. STUART, Who Sues for, &c., Plaintiff,
against
THE GREENBRIER WHITE SULPHUR SPRINGS CO and Others, Defendants. } In Equity.

To the honorable judges of the said U. S. circuit court:

Your petitioners and complainants, Wm. Knabe, Earnest Knabe, and Charles Keidell, partners, trading and doing business under the style and firm name of Wm. Knabe & Co., who are all citizens of the State of Maryland, respectfully present this petition in the above-entitled case, pending in your honors' circuit court as aforesaid, in behalf of themselves and all others who are creditors of the defendant corporation similarly situated and who will contribute their proportion of the costs of this proceeding, and respectfully show unto your honors that the said defendant company is indebted to your petitioners in the sum of $518.63, with interest thereon, at the rate of six per centum per annum, from the 22nd day of June, 1882, as per statement heretofore exhibited before the commissioner in this cause and prayed to be regarded as part of this petition, a copy of which will be filed if required.

That the said defendant corporation was created by and exists under the laws of the State of West Virginia.

That the charter of the said company was made, in the manner required by the laws of the said State, on the 6th day of December, 1880, and on the 29th day of December, 1880, the said company was duly organized thereunder.

A copy of the said charter and the proceedings of organization thereunder have already been exhibited before the court in this suit, and copies of both will be filed by your petitioners when thereto required. From said documents it will appear that the capital stock of said company was fixed at the sum of $150,000,
285 divided into 1,500 shares. Wm. A. Stuart, the plaintiff in the above-entitled suit, subscribed for 375 shares; George L.

Peyton, for 375 shares; Henry M. Matthews, for 375 shares, and Johnson N. Camden, for 188 shares, and Wm. P. Thompson, for 187 shares.

That it is stated in the application for the charter, dated the 6th day of December, 1880, that the $50,000 of the said capitol stock had then been paid in; and it also appears from the statements subsequently made by the incorporators that $25,000 in addition thereto had been paid in by the subscribers prior to the said 6th day of December, 1880, but the payment of the said $25,000 is not mentioned in the charter, and the records of the company do not show when or how the same was paid.

It is apparent, however, from the said records that no requisition was ever made upon the stockholders to pay up anything upon said subscription at any time, unless the resolution adopted by the board of directors on the — day of —— can be so construed. That resolution is in these words and figures: "On motion, the stockholders were called upon to pay in their respective portions of the $4,000 heretofore agreed to be paid in, which, when paid in, will be in full of the capitol stock of $150,000 provided as full-paid-up stock. This resolution has heretofore been filed with the commissioner in this suit, but a copy thereof will be filed herewith, if thereto required.

This resolution was adopted at the very first meeting of the board of directors of said company, held at Barnum's hotel, Baltimore, immediately after the stockholders had organized the said company, the stockholders being the present directors of the said company.

Now, your petitioners charge that the said subscribers to the capitol stock did not pay up into the coffers of the company the amounts respectively subscribed by them at any time whatever; and even if it can be successfully maintained that the alleged payments of $75,000, made months before the company was organized, were good and should be credited upon the subscription (which your petitioners deny), there still remains $75,000 of said capitol stock unpaid and to be collected of the delinquent stockholders and their assignees, all of whom are legally responsible therefor.

286

Your petitioners further charge that the persons who originally subscribed to said capitol stock had early in the year 1880 agreed that they would form a stock company and buy and operate the White Sulphur Springs property, and they agreed with the said Wm. A. Stuart that he should purchase said property at the sale which had been ordered in the case of Gay, for, &c., *vs.* The Greenbrier White Sulphur Springs Company, &c., pending in the United States district court for the district of West Virginia, and that if he did they would purchase it of him at a profit to him, and that, together with him, they would form a joint stock company to operate the property as a watering place for the resort of the public.

That said Stuart accordingly purchased the property, which consisted of nothing except the real estate, without furniture or other equipment necessary for carrying on the hotel for the accommodation of the public.

That said parties and Stuart then took possession of the property, proceeded to purchase furniture and other necessary equipments for the place and business, and to add permanent improvements to the said real estate, thus enhancing considerably the value of said property and adding to the value of the only security which the said Stuart had for the purchase-money agreed to be paid to him, the sum so agreed upon being about $50,000 over and above the price which he purchased it at the judicial sale aforesaid.

That the said parties then proceeded to operate the said property, so permanently improved and equipped, as a watering place
287 for and throughout the season of 1880, styling themselves the Greenbrier White Sulphur Springs Company, and altho' they allege that the season was profitable and that a considerable sum of money was made and realized over and above the running expenses, still at the end of the season all of the money which had been paid up by the parties, to wit, about $75,000, as aforesaid, and all the profits alleged to have been made had been absorbed in improvements to the property, purchase of supplies, furniture, &c., and there remained no money whatever in hand, and the said parties were heavily in debt, and some of the debts now due by the White Sulphur Springs Company were the debts created during the season of 1880 and left unpaid.

Your petitioners charge that all these debts contracted during the year 1880 in the name of the Greenbrier White Sulphur Springs Co. were so contracted before the charter of the said company under which it was organized was obtained, but, nevertheless, they were handed down to the organized company as debts due and to be paid by it, and after the organization of the said company, on the 29th of December, 1880, the $75,000 previously paid was treated as money paid up on account of the capital stock of $150,000, although on 6th December, 1880, the corporation did not pretend that more than $50,000 had been paid in, as will appear from a copy of the said charter, hereinbefore exhibited as a part of this petition.

That the corporation as soon as it was formed proceeded to carry on its business as it had done before its organization, and continued to operate the property during the season of 1881, at the end of which it was still more heavily in debt than at the end of the season 1880, and also for the season of 1882, at the end of which the said corporation collapsed, being wholly insolvent and indebted to
288 an extent exceeding $200,000 independently of the purchase-money due to Stuart for the property, upon which he held and still holds the vendor's lien, except as to the two acres of land exempt therefrom by special agreement.

The affairs of the said company were so conducted that there *was* no profits made during the season of 1881 and 1882, and your petitioners are informed, believe, and therefore charge that at the end of the season of 1880 the said company was insolvent, unless the stockholders had been called upon to pay up the whole amount due on their subscription, which call was never made.

Your petitioners further charge that J. N. Camden and Thompson

saw that they had embarked in an enterprise that would not succeed; they allege that they had paid $17,501 on account of the 375 shares subscribed for by them, to wit, $12,500 at one time and $5,000 at another, and both sums long before the charter under which the company was organized had been obtained; and, accordingly, a few months after the organization, and before the season of 1881 commenced, they sold their interest in said property to R. A. Lancaster and F. O. French, both of New York, at the price of $17,500 cash, being the amount alleged to have been advanced by them, said Camden and Thompson transferring to Lancaster and French their 375 shares of stock, and before the end of the season the said Lancaster and French sold the 375 shares to John P. Branch, who in a short time distributed it among his friends as follows: C. H. Phinnizy, 150; J. H. Dooley, 100; keeping 125 shares for himself, of which he subsequently transferred 75 shares to R. R. Bridges.

That said Phinnizy soon transferred 50 shares to Mrs. Annie E. Branch, and said Dooley transfer-ed 50 shares to A. S. Buford, and on the 9th day of February, 1882, it appears from the records of said company that the stockholders were as follows:

	W. A. Stuart	375 shares.
289	George L. Peyton	375 shares.
	H. M. Matthews	375 shares.
J. P. Branch		50 shares.
C. H. Phinnizy		100 shares.
Mrs. Annie E. Branch		50 shares.
J. H. Dooley		50 shares.
A. S. Buford		50 shares.
R. R. Bridges		75 shares.

And the following persons were the directors of this said company, to wit: Henry M. Mathews, president; W. A. Stuart,

That on the 9th day of Feb'y, 1882, there was a meeting of the board of directors of said company, at which the following persons were present, to wit:

and the resolution of which a copy will be herewith filed, marked "N" 200, was adopted, and subsequently there was a meeting of the stockholders of said company, at which the proceedings of the board of directors in respect to the execution of a mortgage upon the property of said company, covering not only the property purchased of Stuart, but also the furniture and other personal property subsequently acquired (not including, however, the two acres of ground, with privileges thereto annexed, hereinbefore mentioned) was approved and ratified, and in accordance with the resolutions of the company the mortgage was duly executed to W. W. Gordon and Isaac H. Carrington, as trustees, to secure 400 coupons of the said company at $500.00 each.

Your petitioners charge that before said deed of trust or bonds were executed it was determined and agreed by the board of directors of said company that when the said bonds had been
290 executed that the said directors and stockholders should have the right to take said bonds at the rate of fifty cents on the dollar, provided that at the same time such directors or stockholders so taking any of said bonds should also take an amount of the capital stock of said company equal to ½ of the bonds so taken; in other words, if one of the stockholders should take $50,000 of said bonds he should have them for the sum of $25,000, at the same time taking 250 shares of the capital stock at par, the amount of the capital stock having been increased by previous action of the company beyond what it was when the company was first organized; and your petitioners charge that W. A. Stuart agreed to take and did take $50,000 of said bonds and 250 shares of said stock, the bonds at fifty cents *in* the dollar, and the stock at par, and that John P. Branch took the same amount, and, notwithstanding his efforts subsequently to get rid of his obligation to take said bonds and stock upon the terms aforesaid by replacing the certificates of stock upon the 250 shares of stock *upon the 250 shares* issued in his name back into the scrip book by pinning it therein and cutting out the names of the president and secretary of said company, which had been affixed to said certificate, and by taking out said bonds and undertaking to hypothecate them with the Merchants' Nation- bank and Thomas Branch & Co., he is still bound by his original agreement; and your petitioners charge that no authority was ever given by the stockholders or the board of directors to the president or to any other person to hypothecate one single one of said bonds, and that the said John P. Branch knew it; that the said Thomas Branch & Co. is a firm, of which the said John P. Branch is an active partner, and that the said Merchants' Nation- bank is a bank, of which the said John P. Branch is president, so that, personally and officially, he had full notice of the facts hereinbefore set forth; that he has never paid one dollar to the said company on account of the $50,000 which he took, nor one dollar on account of the 250 shares of stock
291 which he agreed to take and did take as aforesaid, so far as appears from the records of the company which have been produced.

That said Stuart alleges and your petitioners also allege that *that* said J. P. Branch is also responsible to the said company for $10,000, the par values of 100 shares of stock which he took from said company on the — day of ——, 188–, and which, it appears from the records of the company, he subsequently sold and transferred to J. M. Kerr, for no part of which has he accounted to said company in any way.

And your petitioners charge that the said J. M. Kerr was at the time the said stock was sold and transferred to him and is now insolvent, which fact was then and is now well known to the said John P. Branch.

Your petitioners further state that the said Stuart claims that he paid the $50,000 which he had undertaken to pay for the bonds and

stock aforesaid to certain creditors of said company, but petitioners insist that he had no right to select the creditors to whom the said sum should have been paid, but that the same should have been paid by him into the treasury of the company, in order that it might have been disbursed by it properly among its creditors *pari passu*, and in selecting such creditors he selected those for whose debts he was personally bound.

He was legally bound to pay the said sum of money, to wit, $50,000, into the treasury of the company for regular and proper disbursement by said company itself in the mode prescribed by law.

Your petitioners further state that the said Stuart also claims to hold the bonds of the said company to the amount of $50,000 more, but they allege that he did not come lawfully by the same, and that they do not constitute any lien upon the property mentioned in the deed of trust aforesaid, and they are informed, believe, and therefore charge that the said John P. Branch also holds $5,000
292 of said bonds which did not so come into his possession as that they constitute any valid lien upon said property.

Your petitioners also state that the remaining $90,000 of said bonds were unlawfully and without any authority from the board of directors of said company and without the knowledge of said board at the time placed in the possession of Alexander F. Matthews to be held and used as collateral security for certain debts due to the Lewisburg bank, at Lewisburg, West Virginia, for which H. M. Matthews, Geo. L. Peyton, and W. A. Stuart were endorsers.

That one or more of said persons, finding said bonds, which had never been issued, altho' ready for issue, in the safe of said company at the White Sulphur Springs, took the same therefrom and deposited them with the said A. F. Matthews, as aforesaid, without the knowledge, much less without the order, of the board of directors of said company, and said A. F. Mathews, who was a director of said company and also a director of the bank aforesaid, took possession of said bonds with a full knowledge of the fact that there was no order of the board of directors of said company directing such disposition of said bonds.

So that your petitioners allege that not one bond of the said company now outstanding in the hands of any holder thereof has been issued by said company as to constitute a lien upon any of the property conveyed in said deed to Gordon and Carrington, for no director or stockholder had the right to take said bonds at a discount while the debts of the company remained unpaid, nor had any officer of said company the right to hypothecate any of said bonds without the authority of the board of directors.

Your petitioners further state that there is now pending in the United States district court for West Virginia a suit under the style of Hodges Bros., who sue, &c., *vs.* The Greenbrier White Sulphur Springs Company and others, one object of which is to require the said company to make requisitions upon the stockholders
293 who are delinquent upon the original subscription of $150,000, which was instituted prior to the institution of the above-

entitled cause of Stuart, &c., *vs.* The Greenbrier White Sulphur Springs Company.

And your petitioners further allege that they are informed, believe, and therefore charge that —— —— actually instituted suits in the State courts, recovered judgment for their respective claims against the said company, but that said judgments were recovered after both the United States district court for West Virginia and this court had taken jurisdiction of the property of the said defendant company, and they insist that the said parties are not entitled — any priority or preference by reason of the said judgments, but that they shall be regarded as creditors standing upon the same footing as your petitioners.

And now your petitioners pray that they be allowed to become parties to this suit in order that — may contest the validity of said deed of trust and have the property conveyed thereby subjected to the payments of all the debts of the company, including their own "*pari passu*," without preference, except the debt due for the purchase-money of the real estate, and they pray that W. A. Stuart, of Saltville, Va.; John P. Branch, of Richmond, Va.; Geo. L. Peyton, of Staunton, Va.; A. F. Matthews, of Lewisburg, W. Va., in his own right and as administrator of H. M. Matthews, deceased; C. H. Phinizy, of Georgia; Mrs. Annie E. Branch, of Georgia; R. R. Bridges, of North Carolina; James H. Dooley, of Virginia; A. S. Buford, of Virginia; Harrison Phoebus, of Fortress Monroe, Va.; J. N. Camden, of West Virginia; A. F. Matthews, of West Virginia, administrator of H. M. Matthews, dec'd; W. M. Thompson, of West Virginia; R. A. Lancaster, of Richmond, Va., and F. O. French, of New York; W. W. Gordon and Isaac H. Carrington, trustees as aforesaid, both of Virginia, and The Greenbrier White Sulphur Springs Co., a corporation created by and under the laws of W. Va., be
294 made defendants to this petition, and that each of them be required to answer the same, but affidavits to each of said answers is hereby expressly waived.

295 And your petitioners further pray that if necessary in the opinion of this honorable court that this petition shall be regarded as a bill in equity, and that in view of the premises all proper orders be made for the purpose of securing the rights of your petitioners against each and every one of the parties hereinbefore named as to a court of equity may seem right in respect to any subscription by any party to any of the stock of said company mentioned herein and in every other matter in the premises mentioned, and invest some fit, proper person or persons with authority to sue for and recover the sums due from delinquent stockholders in said company.

And that the court will declare that the deed to W. W. Gordon and Isaac H. Carrington, trustees, to be null and void, and proceed by proper orders to subject the property mentioned in said deed to the payment — all the debts of said company, except the purchase-money agreed to be paid for the real estate, which is not entitled to any part of the sums of money to be distributed among the creditors

until the real estate on which there is a vendor's lien has been applied thereto.

And that your honor will make all such other and further orders that may be just and equitable to secure to them their rights or which to equity may seem meet; and your petitioner will ever pray, etc.

(Signed) WM. KNABE & CO.,
By T. ELLETT & H. H. MARSHALL,
Of Counsel for Pl'ffs.

296 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, W. Cabell Trueman, a notary public in and for the city of Richmond, in said State, do hereby certify that Charles J. Anderson this day personally appeared before me and made oath that he verily believed that the statements contained in the foregoing petition are true.

Given under my hand and seal this 31st day of August, 1885.

[SEAL.] (Signed) W. CABELL TRUEMAN, *N. P.*

And on another day, to wit, on the 26th day of October, 1885, the following order was made and entered of record, to wit:

W. A. STUART, for, &c., *vs.* THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et als.* } In Equity.

It is ordered that the petition of Wm. Knabe & Co., &c., which was filed by leave of the court on the 3rd day of September, 1885, may be treated and proceeded with as a bill in chancery against the defendants therein named, if the petitioners elect so to do.

And on another day, to wit, on the 2nd day of Dec., 1885, Isaac H. Carrington, trustee, filed his answer to the petition of Wm. Knabe & others; which answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia.

Isaac H. Carrington, of the State of Virginia, one of defendants named in the petition filed in said cause by William Knabe & Co., makes answer to said petition and says that it is true that
297 by trust deed dated April 6th, 1882, the Greenbrier White Sulphur Springs Company conveyed to this respondent and to William W. Gordon, as trustees, all the real estate of said company, and also the personal property held and owned by it, which was then on said real estate, but with the reservation and exception of a lot of two acres. Said conveyance was made to secure four hundred bonds of said company for the sum of $500 each. The terms of the trust will fully appear from the copy of said deed, which is filed with papers of said cause. The trustees in said deed were not charged with the duty of certifying said bonds, nor had they any

right to regulate their issue in any way or to any extent. The company, through its officers, controlled the issue of these bonds. Respondent is informed that all the bonds contemplated by said trust deed are outstanding in the hands of parties claiming that they are entitled to all the security of the deed. The validity of the claim of each holder will be determined by the testimony, part of which has been taken. Respondent is advised that it is his duty as trustee to resist the recognition of such bonds as may appear not to have been properly issued, but that it is equally his duty to protect, so far as he can, such bonds as may appear to be entitled to share in the security of the deed.

Respondent utterly denies the charges in said petition which assail the integrity of said trust deed, and maintains its validity. Upon the numerous questions which will arise as to the claim of each bondholder to participate in the trust, he is advised that he cannot properly take any position until the facts are developed by testimony.

Respondent and his co-trustee have considered it their duty as trustees to take such steps as in their power to promote the proper execution of their trust; and they have considered this as peculiarly incumbent on trustees in their position under the provisions of rule 49 of "Rules of Master for Courts of Equity of the United States," and they therefore employed as their counsel of record ex-
298 Judge Edward H. Fitzhugh, with the request that he would give the case his full attention.

He has done this faithfully and with ability, and at very considerable expense in travelling expenses. The trustees have also been compelled to — a considerable outlay in travelling expenses, in addition to *to* devoting much time and labor to the case.

In response to the other allegations of said petition, respondent says that the knowledge he has of them is derived from the exhibits and testimony in the cause, and he is advised that he will not be required or expected to make further answer in respect thereto.

And, having fully answered, respondent prays, &c., &c.

(Signed) ISAAC H. CARRINGTON, *Trustee.*

And on another day, to wit, on the 16th day of December, 1885, the answer of William A. Stuart to the petition of Wm. Knabe & Co. *et al.* was filed in the clerk's office of this court; which answer is in words and figures following, to wit:

299 The answer of William A. Stuart to the petition filed by Wm. Knabe, Earnest Knabe, and Charles Keidell, partners under the name and style of Wm. Knabe & Co., in the suit pending in the circuit court of the United States for the district of West Virginia, in which the said Stuart and others are plaintiffs and The Greenbrier White Sulphur Springs Company and others are defendants, whether the said petition be proceeded with as such merely or as a bill in chancery against the defendants therein named, under the lease given said petitioners so to proceed.

This respondent, reserving to himself the benefit of all just ex-

ceptions to said petition or bill, for answer thereto, or to so much thereof as he is advised it is material he should answer unto, says—

That he admits that the Greenbrier White Sulphur Springs Company is a corporation duly created and organized under the laws of West Virginia, as will more fully appear from the copy of its charter and the proceedings of organization thereunder, which are, as stated in said petition, already filed in the suit above referred to, from which it appears that the capital stock of said company was fixed at the sum of $150,000, divided into 1,500 shares, with the privilege of increasing the said capital stock by sales of additional shares from time to time to one million dollars in all, your respondent having subscribed for 375 shares of said stock, his codefendant, George L. Peyton, for 375 shares thereof; the late Henry M. Mathews for 375 shares thereof, his codefendant, J. N. Camden, for 188 shares thereof, and his codefendant, Wm. P. Thompson, for 187 shares thereof.

It is true, as stated in the application for the charter, that $50,000 of said capital stock had then been paid in, but in making said statement it was not intended to say that no more than that
300 amount had been paid in, the fact being that prior to the date of said application (3rd December, 188-) there had been paid up in cash, on account of the subscriptions to said capital stock, at least the sum of $70,000. Your respondent is under the impression that it was from $75,000 to $80,000. He knows that he had himself paid at least $17,500 on account of his own subscription and the same amount on account of the subscription of his codefendant, George L. Peyton, for whom he advanced the money, and he has no reason to doubt that the other stockholders paid in like proportion on account of their subscriptions.

Your respondent denies that any portion of the subscriptions to said $150,000 of capital stock (except possibly the portion payable by the late Henry M. Mathews on the call for $4,000, made by the directors at their meeting in December, 1880) remains unpaid. On the contrary, full-paid shares have been issued, and, as your respondent is advised and insists, legally and properly issued to the subscribers therefor or to their assignees, except possibly as to the portion of the $4,000 call payable by said H. M. Mathews, as to the payment of which by said Mathews your respondent is not certain.

The facts are as follows: In January, 1880, a contract was entered into between your respondent and his codefendants, J. N. Camden and George L. Peyton, whereby it was agreed that your respondent should purchase the Greenbrier White Sulphur Springs real estate at the sale thereof then expected to be made under a decree of the district court of the United States for the district of West Virginia, provided it did not sell for more than a certain amount, and that your respondent and said Peyton and Camden should form a joint stock company with a capital stock of $100,000 to purchase the same from your respondent on a very long credit as to the greater
301 portion of the purchase-money (he being unable to give such credit, as he was himself the owner of most of the debts for

which the property was to be sold under the decree) and to operate the same as a place of summer resort.

Your respondent, under said contract, was to become interested in said joint stock company to the extent of one-fourth of said capital stock; the said Peyton to the extent of one-fourth, and the said Camden to the extent of the remaining half thereof, it being understood that Camden was to have the privilege of associating with him, in the ownership of his shares, other persons acceptable to your respondent and Peyton.

The property was purchased by your respondent, under this agreement, at the judicial sale thereof, made on the 31st March, 1880, and the sale having been confirmed by the court, he, together with the said George L. Peyton, the said Camden, Henry M. Mathews, and Wm. P. Thompson, entered into possession of the said property and at once commenced preparation for the springs season, which was near at hand, the said Camden having transferred one-half of his interest under said contract to said Mathews and one-half of the remaining half to said Thompson, he himself retaining one-eighth interest only.

The purchase by your respondent at the judicial sale being of real estate only, he and his associates had to purchase all of the furniture and other personal property necessary for carrying on this large watering place, which they did without delay, the springs season being near at hand, and at great cost. They made also, in the year 1880, valuable and expensive permanent improvements upon the real estate. Soon after they entered into possession, application was made for a charter, but some of the parties not being satisfied with the terms of the charter then applied for, no organization was had under it; but they proceeded to carry on the business under the name of the Greenbrier White Sulphur Springs
302 Company in like manner in all respects as if a charter had been granted, until in December, 1880, under an application then made, the now existing charter was granted and the organization had under it as hereinbefore set forth. It then appeared that the profits of the season of 1880 amounted to upwards of $56,000; all of which, together with the amounts that had been paid in on account of subscriptions to the capital stock, had been expended in the purchase of new furniture and other personal property for the place and in making permanent improvements on the real estate. The property had not only been thus added to and made more valuable than it was when your respondent and his associates took possession, but had shown by the profit of more than $56,000 on the operations of that year its great productive capacity; all of which had been accomplished by the services rendered and means furnished by your respondent and his associates.

In view of these facts and in consideration of the transfer to the company of the benefits of the contract of January, 1880, between your respondent and Camden and Peyton, it was, upon the organization of the company, in December, 1880, deemed just and proper that, upon the payment by the shareholders of the $4,000 then called for, full-paid shares of stock should be issued to them for the

$150,000 that had been subscribed, and they were accordingly subsequently issued. At the same meeting at which the order was entered for issuing these certificates a resolution was adopted increasing the capital stock of the company from $150,000 to $300,000, "the certificates of said increase to be sold at par value for an improvement fund," it being then supposed that there would be no difficulty in obtaining subscribers for the same; and your respondent has good reason to believe that this additional stock, or a considerable portion of it, would within a short time have been subscribed for had it not been for unfortunate differences between
303 the corporators of the company which arose soon afterwards.

It is not true that the corporation was at that time insolvent. It was certainly then believed by all interested in it to be in a perfectly solvent condition, with every probability that it would prove a very valuable and profitable concern, and this without any further payments on account of the subscriptions that had been made to its capital stock.

These being the facts, your respondent denies that there is any right on the part of the company or of its creditors to call upon him for any further payment on his subscription for the 375 shares of the capital stock.

Respondent further says that it is true that on the 9th day of February, 1882, the board of directors ordered an issue of coupon bonds to the amount of $200,000, to be sold at not less than 50 cents on the dollar, and also of $100,000 of stock, to be sold at par, along with the bonds, the bonds to be secured by a deed of trust upon all of the property of the company, with the exception of a lot of not more than two acres near the depot, the privilege being given to the stockholders of the company to take said stock and bonds in amounts proportioned to the stock held by them, the same to be sold to outside parties only in the event that they should not be taken by the then stockholders that this order was subsequently ratified and approved by the stockholders in general meeting, and that the mortgage or trust deed to W. W. Gordon and Isaac H. Carrington, as trustees, to secure 400 coupon bonds of the company of $500 each, was duly executed in accordance with said order and resolutions.

This course was adopted because the company had then become liable for a considerable floating debt, which it did not possess the means of discharging. It was estimated that the sum of $200,000 would be sufficient to discharge the whole of this debt and
304 leave something over, applicable to the improvement of the property; and it was determined to raise this amount upon the bonds and stock of the company, to be issued and secured in the manner above stated, your respondent agreeing to take $50,000 of bonds and $25,000 of stock on the terms indicated, the amount to be paid therefor to be applied in discharge of the floating debt of the company.

Your respondent's codefendant, John P. Branch, said that he and those to whom he had sold stock, would take one-fourth of the amount, and seemed to be confident that he could place among his friends the shares of Mathews and Peyton, they declining to avail

themselves of the privilege to take the same, and your respondent believed that said Branch had taken the $50,000 of bonds and $25,000 of stock on the terms indicated until a considerable time afterwards, when he learned, to his surprise, that said Branch claimed to hold the $50,000 of bonds as collateral security for debts due to a firm of which he was a member and a bank of which he was president.

Respondent, being anxious to have all of the bonds and stock disposed of, so that the floating debt of the company should be paid off, obtained from Messrs. Mathews and Peyton a statement in writing to the effect that they declined to take the bonds and stock which they, as stockholders, had the privilege of taking, hoping that he could find parties who would be willing to take them on the terms indicated, but he was unable to do so.

Respondent, in conformity with the understanding at the time it was determined to issue the bonds and stock, took bonds to the amount of fifty thousand dollars, and stock to the amount of twenty-five thousand dollars, paying for them floating-debt obligations of the company to the amount of $50,000, which he had taken up, paying the full face value thereof. A list of these obligations, certified by H. M. Mathews as president of the company, has been ex-
305 hibited before the commissioner of accounts in the case in which this petition is filed. In consideration of this payment, bonds to the amount of $50,000 and certificates for 250 shares of stock were delivered to respondent.

In addition to the bonds and stock thus taken, respondent has taken ten of said bonds, paying for them with a note of the company to George L. Peyton for the sum of $5,000, payable four months after 18th November, 1881, respondent having taken up said note by paying the full face amount thereof. Your respondent got no stock with these ten bonds. Your respondent thus became the owner of 110 of the bonds secured by said trust deed, 107 of which are still held and owned by him, three having been transferred by him, for valauble consideration, to C. R. Mason & Co.

Your respondent is advised and insists that the 107 bonds still held by him are valid obligations of the company, and that he is entitled to receive the amount due and to become due and payable on said bonds and to the full benefit of the lien of the deed of trust by which their payment is secured.

Respondent denies that said deed of trust is for any reason or to any extent invalid. It was executed in good faith and with the belief, honestly entertained, that with the money to be raised under it all of the then existing floating debts of the company would be paid off, and this would have been the result if the stockholders had, like your respondent, taken the bonds and stock on the terms proposed. While these terms placed the bonds at fifty cents *in* (on) the dollar, theoretically, and the stock at par, respondent regarded himself as practically paying par for the bonds and as receiving the stock therewith as a bonus. He had not subscribed for the twenty-five thousand dollars of stock received with the bonds, and he is willing to surrender it at any time.

306 In taking the $50,000 of bonds and the $25,000 of stock in the way that he did, respondent was fulfilling a promise made in advance to his fellow-stockholders with the hope that they, or others for them, would take the remainder, and that thus the floating debt of the company would be fully discharged.

Respondent was acting more from a sense of duty than from self-interest.

It is certain that he wished he could have had Peyton's and Mathew's shares of the bonds and stock at the same rate, having a paper from them under which he could have exercised the privilege. He would have gladly placed their shares with any one, whether stockholder or not, upon the same terms that he received his, but was unable to find a buyer.

There can be no question that in this whole matter respondent acted in good faith and is entitled to the most favorable consideration of a court of equity.

Respondent admits that there was never any resolution of the board of directors or of the stockholders authorizing the hypothecation of any of said bonds, and respondent never at any time had anything to do with hypothecating them.

Respondent does not feel called upon to answer the allegations of the petition as to his codefendants, John P. Branch and others, and will leave it to them to answer for themselves.

It is true that a number of judgments have been obtained in the State courts of West Virginia against the Greenbrier White Sulphur Springs Company. Whether they constitute liens upon the property of said company or upon any part thereof, is a matter for the court and not for your respondent to determine.

307 It is also true that there is now pending in the United States district court for the district of West Virginia a suit under the style of Hodges Brothers, who sue, &c., *vs.* The Greenbrier White Sulphur Springs Company and others, one object of which is to require the said company to make requisitions upon the stockholders alleged to be delinquent upon the original subscription of $150,000, but it is not true that said suit was instituted prior to the institution of the suit of Stuart, &c., *vs.* The Greenbrier White Sulphur Springs Company, &c., in which this petition is filed. The fact is that this last-mentioned suit of Stuart, &c., *vs.* The Greenbrier White Sulphur Springs Company, &c., was instituted in this court prior to the institution in the district court of said suit of Hodges Brothers, &c., and your respondent is advised that the suit in this court having been first instituted and a receiver having been appointed in it, this court has no jurisdiction, to the exclusion of the jurisdiction of the district, of all questions that may arise as to the liability of the company or of its stockholders to the creditors of the company.

And, having fully answered, without this, that, &c., respondent prays to be hence dismissed, &c.

W. A. STUART.

WM. J. ROBERTSON,
Counsel for Wm. A. Stuart.

VIRGINIA, }
Wythe County, } *To wit:*

I, Ben. W. Terry, a notary public for the county aforesaid, certify that W. A. Stuart personally appeared before me in my county aforesaid and made oath that the facts stated in the foregoing answer, so far as they depend on his knowledge, are true, and so far as they depend on knowledge or information derived from others he believes them to be true.

Given under my hand and official seal this 14 day of December, 1885.

[SEAL.] BEN. W. TERRY, *N. P.*

308 And on another day, to wit, on the 26th day of June, 1886, the following order was made and entered of record, to wit:

In the United States Circuit Court for the District of West Virginia, at Parkersburg.

W. A. STUART, on Behalf of Himself and All of the Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, Complainants,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, &c., Defendant-,

and

WILLIAM KNABE, EARNEST KNABE AND CHARLES KEIDELL, Partners Trading and Doing Business under the Style and Firm Name of Wm. Knabe & Co., on Behalf of Themselves and All Others who are Creditors of the Defendant Company Similarly Situated and Who Will Contribute Their Proportion of the Costs of This Proceeding, Complainants,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, W. A. Stuart, Jno. P. Branch, Geo. L. Peyton, A. F. Mathews, in His Own Right and as Adm'r of H. M. Mathews, Dec'd; C. H. Phinnizy, Annie E. Branch, R. R. Bridges, Jas. H. Dooley, A. S. Buford, Harrison Phoebus, J. N. Camden, F. O. French, W. P. Thompson, R. A. Lancaster, and Isaac H. Carrington and W. W. Gordon, Trustees, Defendants.

These causes came on to be heard together at this term and were argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

309 That W. Josiah Leake, of Richmond, special master commissioner, shall ascertain and report to the court with all convenient speed—

1st. What liens and encumbrances exist on the property of the defendant company; also the amount of such liens and incum-

brances, to whom coming, and the order of their priority, respectively.

II. What is due and owing by the said defendant company to the unsecured creditors thereof, showing the amounts of said claims and to whom the same are due and owing, respectively.

III. What property, assets, and estate of every kind is held and owned by the said defendant company.

IV. What bonds were issued under the deed of trust to Carrington and Gordon, trustees, of the 6th day of April, 1882; the circumstances and conditions under which they were issued, who hold the same, how they acquired them, and at what price; whether they were paid for, and, if so, when and to whom the proceeds were paid, and what disposition was made of said proceeds.

V. Whether any of the persons taking said bonds were directors of said company, and whether they were required and agreed to take any of *of* the stock of said company with said bonds, and, if so, at what price; and whether they have paid for such stock so taken, and, if so, what, when, and to whom, and what disposition was made of the proceeds thereof; and if they have not taken and paid for the said stock, whether they are now bound for the same.

VI. What became of any other of said bonds and who now hold the same, and how and when and under what conditions they became such holders.

VII. Who were the original subscribers to the stock of said company, the amount so subscribed; how much of said subscription, if any, was paid into said company, and what disposition was made thereof; who now holds said stock, and who is now bound for the unpaid-up assessments or residuum due upon said stock, if
310 any there be; whether the said capital stock was afterwards increased; if so, what amount, and who are now the stockholders, and how much of the said stock has been paid for, and what disposition has been made of the proceeds thereof, and how much is now due, and who is now bound for the same.

VIII. Who has been and who are now the stockholders of said company, and how they acquired said stock. And the said commissioner is directed to make enquiries into and report to the court the several matters above mentioned, together with any other matters or things deemed pertinent by himself or which any party or person interested shall require to be specially stated.

IX. And the court doth recommit all the reports heretofore made by D. C. Gallaher in the first of the above-entitled causes, together with all the exceptions thereto not already passed upon by the court, to said W. Josiah Leake, with instructions to examine the said exceptions and report thereon in connection with the other matters referred to him by this order.

X. Said commissioner shall have power to summon all officers or other persons whom he may deem proper, or whom any of the parties in interest may require him to summon, and compel them to testify concerning any subject of enquiry before him. He shall also have power to compel the production of all books, papers, and other evidences of debt relating to any subject of enquiry before him, or

upon which any of the parties in interest shall demand an enquiry, by all proper summons and process, and he is empowered to make said enquiries in Richmond, Va., or at any place in the district of West Virginia.

XI. Said commissioner shall give notice of the time and place of executing this order by publication once a week for four successive weeks in some newspaper published in the city of Parkersburg, West Virginia, and also in one published in the city of Richmond, Va., which publication shall be equivalent to personal service of said notice upon the parties interested, or any of them, except as
311 to parties resident in the district of West Virginia, as to whom notice shall be given according to equity rule No. 75; but if the parties in interest shall by counsel agree upon any time and place for the execution of this order, then said publication may be dispensed with.

The report of Commissioner Leake referred to in the foregoing order was filed in the clerk's office of said court on the 10th day of June, 1887, and is in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of West Virginia.

W. A. STUART and *als.*, Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others, Def'ts,

and

WILLIAM KNABE & EARNEST KNABE & CHARLES KEIDELL, Partners Trading and Doing Business under the Style and Firm Name of William Knabe & Co., Who Sue, &c., Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others, Defendants.

To the hon. judges of the circuit court of the United States for the district of West Virginia:

I respectfully report to the court that in obedience to the decree rendered in the two causes above mentioned on June 26th, 1886, on the 8th July, 1886, I issued a notice to the parties to the said causes, fixing on August 11th, 1886, as the time and the White Sulphur Springs, Greenbrier county, West Virginia, as the place for a
312 partial execution of the requirements of said decree, and notifying said parties that on August 21st, 1886, the further execution of said decree would be adjourned to my office, corner of 11th and Bank streets, Richmond, Va., where I would continue the execution of the mandates of said decree until completed. This notice I caused to be published once a week for four successive weeks, beginning on July 9th, 1886, in the "State," a newspaper published in the city of Richmond, Va., and for a like period in the Parkersburg "State Journal," beginning on July 13th, 1886, as will duly appear

from copies of said notices so published and the certificates of the editors of the said two papers, herewith returned. The decree provided that the publication should be equivalent to personal service of notice upon all the parties to these suits, except as to parties resident in the district of West Virginia. As to these parties I issued a like notice and had same served upon all of them or obtained acceptance of service from them according to equity rule No. 75, and I return herewith the said notices, with the evidence of such service or acceptance of notice duly endorsed thereon.

It is proper to state just here that in fixing the times and places for acting under said decree I conformed to the wishes of all the parties who appeared and took part in the proceedings.

On the 11th August, 1886, I attended at the White Sulphur Springs, Greenbrier county, West Va., when Wm. A. Stuart, complainant in the first of these causes; H. H. Marshall and Tazewell Ellett, counsel for complainants in the second cause; Charles S. Stringfellow, counsel for John W. Kerr and the Merchants' National Bank of Richmond, and Alexander F. Mathews, counsel for J. W. Mathews, personal representative of H. M. Mathews; the Bank of Lewisburg, and and sundry other creditors of the defendant company appeared, and, after an examination of the papers, the cause was adjourned until the next day. On August 12th, 1886, at the same place, the deposition of Wm. A. Stuart was taken in part, and the case adjourned
313 to the 13th August, 1886, on which day Wm. A. Stuart was further examined and the cause adjourned to August 14th, 1886, when Mr. Stuart again took the stand and was further examined and the cause adjourned to the 16th of August, 1886, on which day Wm. A. Stuart was further examined and the deposition of John M. Price was taken and the cause adjourned to August 17th, 1886, on which day the deposition of Geo. C. Lafferty was taken and John C. Wood was partially examined and the case adjourned to the 18th August, 1886, when the deposition of John C. Wood was completed and the cause adjourned — August 19th, 1886, when Mr. Stuart's examination was closed, as set forth on the face thereof (which see), and the cause adjourned until the evening, when George Grant, a creditor, appeared and was examined orally as to his own claim, and the cause adjourned until the 20th August, 1886, on which day I examined the books and papers of the defendant company and adjourned the cause to August 21st, 1886. On August 21st, 1886, by consent of the parties present and pursuant to notice, I adjourned the causes until August 23rd, 1886, to my office, in Richmond, Virginia. On August 23rd, 1886, none of the parties appeared, and I adjourned the cause to Sept. 1st, 1886, at this office, and the rest of the proceedings were had at this place.

On Sept. 1st, 1886, owing to absence of witnesses, the cause was continued to Sept. 2nd, 1886, when William A. Stuart, complainant in first suit; H. H. Marshall and Tazewell Ellett, counsel for complainants in second suit, and Charles S. Stringfellow, counsel for John W. Kerr and the Merchants' National Bank of Richmond, Va., appeared before me, when the depositions of Geo. L. Peyton and John W. Kerr were taken and the causes adjourned to the afternoon,

when, in the presence of Wm. A. Stuart and R. Taylor Scott, counsel for H. Grafton Dulaney, Wm. A. Stuart gave a further deposition. The cause was then adjourned to Sept. 4th, 1886.

On Sept. 4th, 1886, F. R. Scott was examined, and the deposition being incomplete, the causes were adjourned until Sept. 22nd,
314 1886, and then, on that day, they were adjourned from time to time until Dec. 1st, 1886, on which day the deposition of F. R. Scott was completed, and Wm. A. Stuart was recalled on his own motion and made a further deposition or statement, and Geo. L. Peyton was recalled by counsel for complainants in second suit and gave a further deposition, but same was not completed, and Wm. A. Stuart made a further statement in form of a deposition and the causes were adjourned to Dec. 2nd, 1886, when Geo. L. Peyton's deposition was completed and the causes adjourned from time to time to Dec. 10th, 1886.

On Dec. 10th, 1886, the deposition of H. B. Boudar was commenced and the causes adjourned to Dec. 14th, 1886, and on that day were again adjourned to Dec. 18th, 1886, when H. B. Boudar's deposition was completed and the causes were adjourned from time to time until Jan'y 13th, 1887.

On Jan'y 13th, 1887, Wm. A. Stuart and Col. Ellett appeared, and the proceedings set forth on the face of the record of depositions were duly had, and Wm. A. Stuart was further examined and his deposition closed.

All of these depositions and all of the various exhibits referred to and filed with the several depositions are herewith returned.

The causes were then adjourned from time to time for counsel to argue the causes and for them to refer the commissioner to such authorities as they desired to use, and also because of pressing engagements of the commissioner. During the progress of the causes I employed H. B. Boudar, an expert book-keeper, to make off a balance-sheet of the business of the parties doing business in the year 1880 as the Greenbrier White Sulphur Springs Company for that year and to assist me in an examination of the books of the company. I verified his work by a full and careful personal examination of the books. The result of the work was put in the record in the shape of his deposition, and the exhibits filed therewith are returned herewith.

315 In March, 1887, I visited the clerk's offices of the courts of Greenbrier county, West Virginia, and personally examined the records of that office in order that I might ascertain what liens were there recorded against the defendant company's property.

From the evidence in these causes and from the said inspection of the records of the clerk's office in Greenbrier county, West Va., I now respectfully report in response to the mandates of the decree aforesaid, but varying the order of same inquiries somewhat in order, as far as practicable, to avoid repetition.

First.

In response to the third inquiry, which is as follows:

"III. What property, assets, and estate of every kind is held and owned by the defendant company?"

I report that the defendant company owns the following property, to wit:

I. The White Sulphur Springs real estate, lying in Greenbrier county, West Virginia, containing about 7,000 acres (excluding therefrom the two-acre lot below mentioned), conveyed to said company by Wm. A. Stuart and wife by deed dated 19th March, 1882, subject to certain *certain* reservations therein set forth.

II. The "Hoke" tract, in Alleghany Co., Virginia, containing 2,800 acres, conveyed by said Stuart and wife by said deed.

III. The "two-acre" lot near Chesapeake & Ohio R. R. Co.'s White Sulphur depots and opposite the Methodist church, which will hereafter be referred to as the "two-acre lot," conveyed to said company by said Stuart and wife by the deed aforesaid, a copy of which is filed with Commissioner Gallaher's first report.

IV. A small parcel of land containing $11\frac{120}{1000}$ acres and of small value, at the foot of "Mill hill," adjoining the "Beauregard" or "Jericho" tract, in Greenbrier county, which was conveyed to the defendant company by F. R. Atkinson and wife by deed dated
316 Sept. 5th, 1881, recorded in D. B. No. 32, p. 396, on Sept. 12th, 1881.

V. The furniture and other perishable property which passed into the hands of A. L. Boulware, receiver in this cause, and set forth in full and in detail in his reports.

VI. The liability to the company on the part of its stockholders, which is specially set forth hereafter.

Second.

In response to the inquiry:

I. What liens and encumbrances exist on the property of the defendant company; also the amount of such liens, to whom *coming*, and the order of their priority, respectively?

I report, stating the liens on the several parcels and kinds of property:

1st. On the whole of the real estate of the company in West Virginia and Virginia (other than the $11\frac{120}{1000}$ acres derived from Atkinson and exclusive of the "two-acre lot").

First Lien.

Amount of original vendor's lien against Wm. A. Stuart, due commissioners in the suit of Gay, &c., *vs.* White Sulphur Springs Co. and others, as established by decrees in said suit, to wit:

1. Amount of Wm. A. Stuart's 4th & 5th bonds to Com'rs Snyder and others	$160,212 06
Int. from May 12th, 1885, to June 1st, 1887, pursuant to decree of May 25th, 1885 (see it)	19,276 17
2. Bal. on 3rd bond, as established by decree of Nov. 27th, 1886	2,948 44
Int. from Oct. 15th, 1883, to June 1st, 1887	649 19
Aggregate	$183,085 86

with interest from June 1st, 1887, on $163,260.50 part thereof.

317 It is proper to state that Wm. A. Stuart contends that the decrees aforesaid fixing said amounts are erroneous, and that he has appealed from the first-named decree and his appeal is now pending in the Supreme Court, at Washington, and that he intends to ask for a rehearing of the last of said decrees.

Second Lien.

Bank of Lewisburg, decree of April 17th, 1883.

See Com'r Gallaher's 1st report and exhibits and see decree in same cause of Dec. 1st, 1886.

Prin.	$30,678 84
Costs	92 64
Interest to July 14th, 1885	4,126 32
Then due, say	$34,897 80
Paid then by Wm. A. Stuart	4,992 05
Balance	$29,905 75

Int. to Feb. 1st, 1887, $2.781.24, paid by Wm. A. Stuart.

Int. from Feb. 1st, 1887, to June 1st, 1887	$598 11
June 1st, 1887, aggregate	$30,503 86

with interest on $29,905.75 till paid.

Third Lien.

H. G. Dulaney, Jr., assignee of W. A. Stuart's vendors lien:

Principal sum due as asssignee	$200,000 00
Int. on same from Mar. 1, 1887, to June 1, 1887	3,250 00
Then aggregate	$203,250 00

with interest on $200,000 at 6½ % per annum.

Fourth Lien.

Wm. A. Stuart's vendor's lien, as of its cash value, if paid on June the first, 1887. See deposition of Stuart and Exhibit "J. W. M. No. 1" and deed from Stuart and wife to the defendant company.

318

1882.				
Sept. 1.	Note due this day	$23,110 22		
	Int. to June 1st, 1887	6,586 36		
				29,696 58
1883.				
June 1.	Note due this day	$48,746 61		
	Int. to June 1st, 1887	10,967 98		
				59,714 59
1884.				
Sep. 1.	Note due this day	$61,249 17		
	Int. to June 1st 1887	10,106 11		
				71,355 28
1885.				
Sept. 1.	Note due this day	$33,150 24		
	Int. to June 1st, 1887	3,480 77		
				36,631 01
1886.				
Sept. 1.	Note due this day	$39,171 42		
	Int. to June 1st, 1887	1,762 71		
				40,934 13
1887.				
June 1.	Bal. prin., all other notes	40,085 19		
	To fall due	200,000 00		
		42,019 26		
		$282,104 45	$282,104 45	
	Int. on $82,104.45 at 6 %, 9 mon.	3,694 70		
	" " $200,000.00 at 6½ %, 9 mon.	9,750 00		
				294,559 15

Of which $200,000 bears interest thereafter at 6½ % per annum, and the residue of the principal, to wit, $287,532.11 at 6 % per annum.

Aggregate		$532,890 74
From said aggregate of $532,890.74 deduct amount due in Gay suit	$183,085 86	
Deduct amount due B'k of Lewisburg	30,503 86	
Deduct amount due H. G. Dulaney, Jr.,	203,250 00	
		$416,838 72
Balance due Wm. A. Stuart		$116,052 02

Of which $94,365.86 is principal carrying 6 % interest from June 1st, 1887, till paid.

319 *Fifth Lien.*

Mechanic's lien (see page 33 of Com'r Gallaher's report No. 1), decree of Greenbrier circuit court—Charles O. Ghe, for benefit of Geo. W. Palmer.

Principal	$4,063 10
Costs	32 50
Int. from 26th April, 1884, to June 1st, 1887	755 00
Total	$4,850 60

Sixth Lien.

Specially preferred debts due Wm. A. Stuart:

1. Amounts paid for insurance in 1882	$4,101 35
Or by amounts paid by receiver and which was due by H. Phoebus, lessee	3,348 20
Bal. as of Dec. 1st, 1882	$753 15
2. Wages paid employee for protection of property from lien. See acts of West Va., 1879, ch. 12, sec. 1	2,400 00
Total of principal	$3,153 15
Int. from Dec. 1st, 1882, to June 1st, 1887	851 35
Aggregate	$4,004 50

Seventh Lien.

The deed of trust from the Greenbrier White Sulphur Springs Company to W. W. Gordon and I. H. Carrington, trustees, dated on April 6th, 1882, is the next lien upon the said property to the extent that the same may be held valid. A statement of the bonds claimed to be secured by this trust deed is given below.

Eighth Lien.

Judgments against the defendant company obtained before the appointment of the receiver (but the debts following are not
320 liens upon the lands in Alleghany Co., Va.)

1st. Perkins & Co., for A. F. Mathews, obtained Nov. 13th, 1882. See Com'r Gallaher's 1st report, p. 34 (p. 37 of this record):

Prin.	$243 97
Costs	17 30
Int. from Nov. 23rd, 1881, to June 1st, 1887	76 21
Aggregate	$327 48

2nd. 1. A. F. Mathews, rendered Dec. 29th, 1882. See Com'r Gallaher's 1st report, p. 35 (37 of this record):

Prin.	$250 19	
Costs	2 00	
Int. from Dec. 29th, 1882	67 50	
		$319 69

2. Camden Consolidated Oil Company, rendered 29th Dec., 1882. See Com'r Gallaher's report, p. 36 (p. 38 of this record):

Principal	$60 10	
Costs	2 00	
Int. to June 1st, 1887	16 22	
		$78 32

3. J. Hunter Nickell, for A. F. Mathews, Dec. 29, 1882. See Com'r Gallaher's 1st report, p. 36 (p. 38 of this record):

Prin.	$153 25	
Costs	2 00	
Int. to June 1st, 1887	41 37	
		$196 62

4. John B. Hoge, for A. F. Mathews, rendered Dec. 29th, 1882. See Com'r Gallaher's report, p. 37 (p. 39 of this record):

Prin.	$139 02	
Int. to June 1st, 1887	37 63	
Costs	2 00	
		$178 65

5. J. B. Peyton, for A. F. Mathews and Wm. A. Stuart, rendered Dec. 29, 1882. See Com'r Gallaher's 1st report, p. 38 (p. 40 of this record):

	Prin.	$252 42	
321	Costs	2 00	
	Int. to June 1st, 1887	68 15	
			$322 57

These judgments are to be paid ratably.

3rd. E. Levering & Co., for A. F. Mathews, rendered Jan. 6, 1883. See Com'r Gallaher's 1st report, p. 37 (p. 39 of this record):

Prin.	$199 15	
Costs	2 00	
Int. to June 1st, 1887	53 70	
		$254 85

4th. Harlow & Argabright, rendered Feb. 10, 1883. See extract, Exhibit "H. & A." herewith:

Prin.	$173 68	
Costs	1 55	
Int. to June 1st, 1887	44 85	
		$220 08

5th. Withrow & Son; Single, justice; Feb. 17th, 1883:

Principal	$28 57	
Costs	2 00	
Int. to June 1st, 1887	7 20	
		$37 77

6th. R. B. Wilson, for A. F. Mathews, Feb. 27th, 1883. See Com'r Gallaher's 1st report, p. 35 (p. 38 of this record):

Principal	$105 70	
Costs	2 00	
Int. to June 1st, 1887	26 96	
		$134 66
Aggregate		$2,070 69

Ninth Lien.

The following judgments were obtained in the circuit court of Greenbrier county, at the April term, 1883, which term began
322 on April 16th, 1883. The receiver's bond was filed in court on April 17th, 1883. If the court shall hold that these judgments are valid, then they are now here properly classified; otherwise they should be included as a part of the unsecured indebtedness of the defendant company.

1. M. E Miller, for W. J. Johnson. See Gallaher's 1st report, p. 34 (p. 36 of this rec.):

Prin.	$706 36	
Costs	15 90	
Int., Ap'l 17, 1883, to June 1, 1887	174 60	
		$896 86

2. Ed. Burke:

Prin.	$337 41	
Costs	10 90	
Int. to June 1st, 1887	83 45	
		$431 76

3. E. F. Wicker:

Principal	$276 65	
Costs	10 90	
Int. to June 1st, 1887	69 00	
		$356 55

4. R. D. Irwin:

Principal	$117 64	
Costs	8 40	
Int. to June 1st, 1887	29 11	
		$145 15

5. J. D. Hudson:

Principal	$127 56	
Costs	13 00	
Int. to June 1st, 1887	31 80	
		$172 36

6. Smith & Norman:

Principal	$488 98	
Costs	13 00	
Int., April 19, 1883, to June 1st, 1887	120 63	
		$622 61
Aggregate 9th class		$2,625 29

Liens upon the "Two-Acre Lot" and the Land near "Mill Hill," Conveyed by Atkinson and Wife to the Defendant Company

(Note.—The debt due to the commissioners in the suit of "Gay, &c., *vs.* White Sulphur Springs Company and *als.*" is, of course, the first lien upon the "two-acre lot," but it is assumed that the property upon which Stuart reserved his vendor's lien will dis-
323 charge the amount due to said commissioners, and therefore that debt is not included in this table.)

First Liens.

All of the judgments hereinbefore mentioned as the liens of the 8th class on the 7,000-acre tract and other property, and in the order of priority therein set forth.

Second Liens.

All of the judgments obtained at the April term, 1883, of the circuit court of Greenbrier, and which are hereinbefore mentioned as constituting the 9th class of liens upon the 7,000 acre tract and other property. These judgments are to be paid ratably.

There seems to have been some doubt whether the order appointing A. L. Boulware, Esqr., receiver, which was made on April 13th, 1883, at Richmond, and which became effective on April 17th, 1883, when his bond was filed in the clerk's office at Clarksburg, included the "two-acre lot." In the suit of "Hodges, &c., *vs.* Greenbrier White Sulphur Springs Company and *als.*," pending in the district court of the United States for the district of West Virginia, an order was entered on the 30th day of May, 1883, appointing Jasper Y. Moore, Esq., receiver of the "two-acre lot." See letter from Jasper Y. Moore to Com'r W. J. Leake, returned here-

with and dated April 22nd, 1887. By an order made on August 24th, 1883, on the petition of W. J. Johnson, A. L. Boulware was ordered to continue in the possession of the "two-acre lot" as receiver. As the judgments of the April term, 1883, of the circuit court of Greenbrier county were rendered before the appointment of Mr. Moore as receiver in the "Hodges" suit, and prior to this order of the 24th of August, 1883, I have concluded to report said judgments as liens upon said property.

Liens upon the Furniture and Other Personal Property of the
324 *Defendant Company which Passed in the Receiver's Hands.*

First Lien.

Wm. A. Stuart's preferred debts:

Amount due him for insurance and advances to hands, being same item as fet forth as sixth lien on general property. See above, as of June 1st, 1887..... $4,004 50

Second Lien.

Whatever amount the court may determine to be due under the deed of trust to Gordon & Carrington, trustees, dated April, 1883, and specially mentioned below.

Fund Due from the Stockholders.

There are no liens upon the fund, it being a trust fund for the general and equal benefit of the defendant company's creditors.

Third.

In response to the second inquiry:

II. What is due and owing by the defendant company to the unsecured creditors thereof, showing the amount of said claims, and to whom they are due and owing respectively?

The following statement answers this inquiry, showing amounts due, with interest in every case to June 1st, 1887. The references are to Com'r Gallaher's 1st report. The first column of figures shows the principal of each debt, and the second column aggregate amount due June 1st, 1887.

325 Name of creditors.	(This record.)	Gallaher's report.	Principal.	Aggregate.
1. James Gordon & Co.	(p. 44)	(p. 43)	$822 19	$829 75
2. Purcell, Ladd & Co.	"	" "	1,068 42	1,367 57
3. Davenport & Morris	"	" 44	5,638 25	7,212 00
4. Oscar Cranz	45	" "	1,073 25	1,379 12
5. Watkins, Cottrell & Co.	"	" "	2,747 46	3,460 37
6. Geo. P. Stacey & Co.	"	" "	1,623 85	2,086 64
6½. Thos. Branch & Co., assignees of Geo. P. Stacey & Co.	46		4,700 00	5,998 50
7. James Thomas & Son	46	" 46	369 74	472 34
8. Isaac H. Carrington	47	" 47	900 00	1,120 50
9. Chas. G. Summers & Co.	"	" "	210 73	258 33

10. Forbes & Mann	48	"	"	329 40	423 30
11. Edward Reese	"	"	"	1,058 24	1,366 89
12. F. A. Laidley & Co.	"	"	"	1,818 45	2,364 00
13. "State," R. F. Beirne	"	"	49	25 00	32 65
14. J. W. Watson & Co.	49	"	"	723 53	941 80
15. W. D. Shurtz & Co.	"	"	"	79 26	102 25
16. S. S. Cottrell & Co.	"	"	"	364 82	477 00
17. J. B. Winter	"	"	50	568 60	733 49
18. James C. Smith	"	"	"	881 70	1,135 19
19. Geo. Gibson, Jr.	50	"	"	837 61	1,069 89
20. Richmond Ice Co.	"	"	"	936 00	1,205 10
21. West, Johnson & Co.	"	"	"	596 64	766 70
22. H. M. Smith & Co.	51	"	52	70 20	91 20
23. G. W. Anderson & Sons	"	"	"	401 50	522 95
24. Nelson, Matter & Co.	"	"	"	999 50	1,284 35
25. James Clark, assignee	"	"	53	3,008 49	3,868 92
26. McDowell & Co.	"	"	"	608 08	796 59
27. C. Y. Davidson & Co.	52	"	"	288 88	374 10

326

	(P. of this rec.)	Gallaher's rep.		
28. Keen & Haggerty	(52)	(p. 54)	$132 55	$171 70
29. A. Hoen & Co.	"	"	"	585 40	766 87
30. A. S. Abell & Co.	"	"	"	543 39	704 16
31. Baltimore United Oil Co.	(53)	"	55	999 20	1,288 97
32. Thos. C. Basshor & Co.	"	"	"	47 64	61 46
33. Wm. Knabe & Co.	"	"	"	518 63	688 87
34. Lord & Packham	"	"	"	72 25	93 20
35. John C. Wood	"	"	"	200 00	254 00
36. James Bates	"	"	56	69 33	91 80
37. Peter Henderson & Co.	(54)	"	"	132 14	160 26
38. W. R. Johnson	"	"	"	73 39	94 11
39. Taliaferro & Co.	"	"	"	47 75	62 94
40. Woven Wire Mattrass Co.	"	"	57	80 00	104 40
41. W. A. Stevens	"	"	"	54 00	69 82
42. E. W. Bowditch	(55)	"	"	579 65	744 83
43. Duparquet & Huat	"	"	"	99 60	128 98
44. The Habl Manufacturing Co.	"	"	58	330 75	426 75
45. Wheeling Register	"	"	"	7 65	10 10
46. Baltimore American	"	"	"	17 50	23 30
47. Jas. T. Williams & Co.	"	"	"	110 67	142 12
48. J. D. Ferguson & J. D. McLeon	(56)	"	"	300 00	384 75
49. Chesapeake & Ohio R. W. Co.	"	"	59	120 00	155 00
50. Western Union Tel. Co.	"	"	"	394 70	492 40
51. Miss Sally P. Bass	"	"	"	22 66	29 30
52. Dr. Moorman	(57)	"	60	250 00	321 25

53. George Grant, assignee of J. Grant Peterkin, bal. prin., Feb. 19th, 1884 --		1,314 66	1,473 71
54. W. J. Johnson & Co., two notes, one previously reported as the property of Wm. A. Stuart (see deposition of Stuart) $3,039.98		4,910 84	6,208 00
55. Mohler & Co.		482 93	536 93
56. John T. Harper, judgm't Nov. 5, 1883 --		388 38	482 76
57. W. N. Coffman		30 03	38 58
58. C. W. Conrad, for C. D. Reus		25 97	37 05
Aggregate amount of above unsecured claims --			$57,169 85

Unsecured Claims Owned by W. A. Stuart.

				Principal.	Aggregate.
1. Blackmore & Kinsey	(p. 59 of rec.)		(p. 64)	$2,721 95	$3,461 42
2. Courtney	"	"	" "	3,312 69	4,212 70
3. P. Lydecker	"	"	" "	1,273 78	1,636 48
4. Eugene Carrington --	"	"	" 65	280 00	356 30
5. Wilson Palmer	60		" "	707 99	907 65
6. J. H. Signiago	"		" "	978 00	1,247 73
7. C. R. Mason & Co. --	"		" "	4,681 92	6,096 30
8. James Hewees	"		" "	493 30	633 89
9. J. W. Geddes	"		" 66	609 39	783 10
10. C. P. Knight --	"		" "	89 63	108 92
11. Courtney & Armstead	61		" "	42 39	54 25
12. C. P. Stokes & Co. --	"		" "	144 23	184 95
13. Basshor & Co.	"		" 67	2,444 30	3,104 24

Notes Paid by Stuart.

14. Note of company --	61		(p. 67)	$6,553 28	$8,705 87
15. " " do. --	62		" 68	5,000 00	6,659 96
16. " " do. --	"		" 68	5,000 00	6,659 96
17. " " do. --	"		" 68	10,000 00	13,318 26
18. " " do. --	"		" 69	2,605 00	3,227 19
328	Gallaher's rep.		P. of this rec.		
19. Note of company --	(p. 69)		63	$2,000 00	$2,586 04
20. " " do. --	" 69		"	4,000 00	5,109 73
21. " " do. --	" 70		"	4,338 00	5,571 03
22. Judgment to National Valley Bank of Staunton	" 71		"	5,000 00	6,486 24
23. Amount paid and secured by Wm. A. Stuart to Bank of Lewisburg (partly paid and partly secured by attachment and judgment *vs.* Stuart and decree to subject his vendor's lien to payment of same)				30,678 84	38,277 15
Aggregate of the preceding 23 debts due Wm. A. Stuart					$120,839 36

Unsecured Claims Owned by Wm. A. Stuart.

And which he claims is to be set off against his stock liability.

24. Wm. A. Stuart for $\frac{2}{3}$rds of amount of decree in favor of H. M. Bell, receiver in suit of "Effinger *vs.* Stuart and *als.*," paid by Wm. A. Stuart	$15,196 82		$20,579 12

Amount Paid by Wm. A. Stuart for Purchase of Bonds.

25. W. A. Stuart, amount paid in debts of Co. for $50,000 of coupon bonds and			
329 250 shares stock	$50,000 00		
Int. from April 15th, 1882	15,375 00		
			65,375 00
Aggregate of the 25 debts			$206,333 48

Unsecured Claim Owned by J. N. Camden.

And which he claims is to be set off against his stock liability.

1. J. N. Camden, for $\frac{1}{3}$rd of decree paid by him in "Effinger *vs.* Stuart and *als.*"	$7,598 41		$10,284 56

Debts of Merchants' National Bank of Richmond.

(For which it claims the benefit of certain bonds below mentioned as collateral security, but here treated as unsecured.)

1. Note due Oct. 2nd, 1882, for	$10,000 00		$12,800 00

Debts of Thomas Branch & Co.

(For which they claim the benefit of certain bonds held as collateral, below mentioned, but here treated as unsecured.)

1. Notes due Dec. 4, 1882	$10,000 00		
Less credit	487 85		
Bal. prin.	$9,512 15		
2. Note due Jan. 4th, 1883	10,000 00		
		$19,512 15	$24,814 95

330 Fourth.

In response to the inquiry: "IV. What bonds were issued under the deed of trust to Carrington & Gordon, trustees, of the 6th April, 1882; the circumstances and conditions under which they were issued; who hold the same, how they acquired them, and at what price; whether they were paid for, and, if so, when and to whom the proceeds were paid and what disposition was made of said proceeds?"

(A copy of the said deed of trust is filed with the record in these causes.)

I now report:

1st. That 400 bonds of $500 each, numbered from 1 to 400, inclusive, were issued under said trust deed. These bonds are fully

described in Commissioner Gallaher's first report and conform to the requirements of the deed and need not be further described.

2nd. The said trust deed and bonds were prepared and executed under the resolutions of the board of directors of the Greenbrier White Sulphur Springs Company, adopted at their meetings held on Feb. 9th, Feb. 10th, and April 25th, 1882 (see minute book of said boards, pages 37 to 41, inclusive), and under the resolutions of the stockholders of said company adopted at the meeting held on April 6th, 1882 (see page 100 of same book, which book is returned with this report as a part of the record in these causes).

3rd. The said bonds are held as follows:

I.

Wm. A. Stuart holds 107 of these bonds, Nos. 1 to 35 and Nos. 39 to 100 and Nos. 301 to 310, inclusive. Of these, 100 were purchased by said Stuart at 50 cents on the dollar, he taking at the same time 250 shares of stock at par and paying for the whole in debts of the company which he had discharged, as set forth in "Memorandum, Exhibit W. A. S. No. 1," filed with Commissioner Gallaher's 1st report, the sum of.. $50,000 00

331 And for the remaining 7 bonds he paid par, in debts of the company ---------- 3,500 00

II.

C. R. Mason & Co. hold three of said bonds, Nos. 36 to 38, inclusive, which they received from Wm. A. Stuart, who paid par for the same, in debts of the company- $1,500 00

III.

John W. Kerr holds 40 of said bonds, Nos. 101 to 140, inclusive, which he purchased at 50 cents on the $, and buying at the same time 100 shares of the stock of the company at par. This stock and these bonds were purchased by said Kerr, as set forth in his deposition, from John P. Branch, a director of the company, and he paid for same by giving to Thos. Branch & Co. his note for $20,000.00 and giving the bonds and stocks as collateral ---------- $20,000 00

This sale was made by Thomas Branch & Co., through John P. Branch, on April 29th, 1882. The firm of Thomas Branch & Co. gave the Greenbrier W. S. S. Co. credit for the $20,000.00, amount of sales of stocks and bonds to Jno. W. Kerr, on their account with them, thus leaving a balance due to the company of $12,858.92. See Exhibit "F. R. S. No. 1." with deposition of F. R. Scott. On May 3rd, 1882, this sum was paid to the said company by Thos. Branch & Co. by their paying a draft drawn for said amount by H. M. Mathews, president of said company, dated May 1st, 1882.

IV.

Thomas Branch & Co. hold 60 of said bonds, Nos. 201 to 230, inclusive, and 141 to 170, inclusive, and they hold the same as collateral for the two notes of the company for $10,000.00 each, copies of which are filed with the deposition of F. R. Scott, returned herewith. See first sheet of Exhibit "F. R. S. No.
332 1, dated April 29th, 1882." ---------- $30,000 00

V.

The Merchants' National Bank of Richmond holds 50 of said bonds, Nos. 231 to 250, inclusive, and Nos. 171 to 200, inclusive, as collateral for the company's note for $10,000.00, dated April 29th, 1882. See Exhibit "F. R. S. No. 6." ---------- $25,000 00

VI.

The Bank of Lewisburg holds 140 of said bonds, Nos. 251 to 300 and Nos. 311 to 400, inclusive, as collateral security for its claim against the defendant Co. ---- $70,000 00

Total, 400 bonds at $500 each ---------- $200,000 00

The terms of the resolutions of the stockholders and of the board did not authorize the hypothecation of the said bonds, and there was no authority to sell even, except to stockholders, up to May 15th, 1882, and then only to such as took stock as provided by the resolutions—at par.

I am of opinion and report that the bonds held by the Bank of Lewisburg, the Merchants' National Bank of Richmond, and Thomas Branch & Co. are not binding upon the company, and were improperly and illegally issued, without proper authority from the company, and that the present holders of said bonds had notice that the said bonds were improperly issued.

I am also of opinion and report that it was incompetent for a director of the company to take the bonds upon the terms and conditions and under the circumstances that surrounded Mr. Stuart when he became the holder of the $50,000.00 of bonds issued to him at 50 cents on the $, and which he paid for as hereinbefore indicated, and that therefore he has no right to claim anything under such bonds except the unsecured debts which he used in paying for the same.

The following bonds, with all the interest thereon from
333 date thereof, I report as valid and binding upon the company and as entitled to the full benefit of the lien of the trust deed of April 6th, 1882, to Carrington & Gordon, trustees, to wit:

1. John W. Kerr's bonds, for---------- ----- $20,000 00
Interest to June 1st, 1887 -- ---------- 6,150 00
---------- $26,150 00

2. Wm. A. Stuart's 7 bonds, which he paid for in full	$3,500 00	
Interest to June 1st, 1887	1,076 25	
		$4,576 25
3. C. R. Mason & Co.'s 3 bonds, paid for in full	$1,500 00	
Interest to June 1st, 1887	461 25	
		$1,961 25
Aggregate		$32,587 50

with interest on $25,000 from June 1st, 1887.

The above calculation of interest is intended to show present value of the debts, though the coupons fall due on Sept. 15th in each year.

Fifth.

The fifth inquiry is:

V. "Whether any of the persons taking said bonds were directors of said company, and whether they were required and agreed to take any stock of the said company with said bonds, and, if so, at what price; and whether they have paid for such stock so taken, and, if so, when and to whom, and what disposition was made of the proceeds thereof; and if they have not taken and paid for said stock, whether they are now bound for the same."

In response to this inquiry, I will state that, in the main, it is answered by the response to the preceding inquiry.

Wm. A. Stuart and John P. Branch (the latter being president of the Merchants' National Bank of Richmond and a member of
334 the firm of Thomas Branch & Co.) both were directors of the defendant company. The persons purchasing said bonds were required and agreed to take stock in said company in proportion of $100 of stock to $200 of bonds—the bonds at 50 cents and the stock at par.

Wm. A. Stuart took $50,000.00 of bonds at 50 cents and 250 shares — stock at par, making $50,000.00, which he paid for in the manner hereinbefore set forth.

On April 29th, 1882, forty of said bonds and 100 shares of stock were delivered to John P. Branch and the scrip (No. 21) issued in his name, but this he transferred on the same day to John W. Kerr, as before mentioned. On the same day, $130,000.00 of said bonds and certificate No. 22, for 250 shares of stock, in John P. Branch's name, were left with him, and retained by him until in Sept., 1882, when he returned same to Pres. H. M. Mathews. There is some conflict in the evidence as to the terms upon which he received this stock and these bonds, but, upon the whole evidence, I am of opinion that John P. Branch never subscribed to this stock, but received it for the purpose of trying to sell it for the company. See Exhibit "F. R. S. No. 1," with F. R. Scott's deposition. If the issue of said stock to him and his retention of the certificate from April to Sept., 1882, makes him responsible as a subscriber to said stock, then he is still liable for $25,000.00 thereon.

John W. Kerr paid for his stock and bonds in the manner before indicated.

Sixth.

I have already stated how all the bonds of the company which were issued under the deed to Carrington & Gordon, trustees, of April 6th, 1882, are held, and how and under what circumstances.

Seventh and eighth.

VII. "Who were the original subscribers to the stock of the said company, the amount so subscribed, how much of said sub-
335 scriptions, if any, was paid into said company, and what disposition was made thereof; who now holds said stock, and who is now bound for the unpaid-up assessments or residuum due upon said stock, if any there be; whether the said capital stock was afterwards increased; if so, to what amount, and who are now the stockholders, and how much of said stock has been paid for, and what disposition has deen made of the proceeds, and how much is now due, and who is bound therefor?"

"VIII. Who have been and who are now the stockholders of said company, and how they acquired their stock, &c.?"

I respectfully refer the court to what is said on this subject by Commissioner Gallaher in his second report, commencing at page 28.

The history of the origin of the company is correctly given there. The original capital stock of the company was $150,000.00, divided into shares of $100 each, and the original subscribers to the stock were the five original incorporators, who took stock to the following extent:

William A. Stuart,	for	375	shares	$37,500 00
Geo. L. Peyton,	"	375	"	7,500 00
H. M. Mathews,	"	375	"	37,500 00
J. N. Camden,	"	188	"	18,800 00
W. P. Thompson,	"	187	"	18,700 00
		500		$150,000 00

Prior to the formation of the company the corporators had paid into the business of the "Greenbrier White Sulphur Springs Company," as it did business in 1880, the sum of $50,000.00, and this money had been expended in permanent improvements and furniture, &c., and composed a part of the assets of the concern at the end of the year 1880. See Exhibit "Boudar No. 1" with deposition of H. B. Boudar. On Dec. 30th, 1880, a call was made for $5,000.00 from Stuart, Peyton, Mathews, Thompson, and Camden,
336 jointly, and they paid these calls at once, except as to H. M. Mathews, who only paid $4,000, thus making in all $69,000.00 of money, or money's worth, actually paid in on account of said stock subscription. On Dec. 30th, 1880 (see minute book, p. 13), the following resolutions were adopted:

"On motion, the stockholders were called to pay in their respect-

tive proportion of the four thousand dollars ($4,000.00) heretofore agreed to be paid, and which, when paid, will be in full of the capital stock of $150,000.00 provided as full-paid-up stock;" and,

"On motion, the president and secretary were authorized to issue to the various stockholders certificates to the amount of one hundred and fifty thousand dollars of the capital stock of this company, in proportion of their respective subscriptions and in full payment of the same."

These resolutions were based upon an erroneous balance-sheet or statement of the business of the parties called the Greenbrier White S. S. Co. for the year 1880, by which it was made to appear that there had been made a profit of $80,000.00 by said business during that year, which with the $70,000.00 paid in said business and to be paid in to the company, would have made an input of $150,000.00, the amount of said stock.

But said statement was far from correct. Instead of a profit of $80,000.00, the real profit for the said year 1880 was only $4,251.68. (See "Boudar No. 2.")

I report, therefore, that the original subscribers to the stock have paid in and owe still the following sums:

1. Wm. A. Stuart subscribed for 375 shares			$37,500 00
Paid in old business	$12,500 00		
" " company	5,000 00		
His fourth of profits	1,062 92		
		$18,562 92	
Balance due by him			$18,937 08
337 2. Geo. L. Peyton for like sum			18,937 08
3. H. M. Mathews for like sum, and an additional $1,000.00, as he only paid $4,000.00 on the $5,000.00 called			19,937 08
4. J. N. Camden on his 180 shares paid in like proportion and owes in like manner			9,495 12
5. W. P. Thompson on his 187 shares paid in like manner and owes in like manner			9,441 96
Total indebtedness			$76,748 32

And this should bear interest from Dec. 30th, 1880, when it was held out to the world as having been paid in.

Each of the original subscribers is bound for the unpaid part of his subscription. The capital stock was afterwards increased under the resolutions under which the deed of trust of April 6th, 1882, to Carrington & Gordon, trustees, was executed; but I have already reported in regard to the stock issued thereunder.

Names of Stockholders.

I have already shown who were the original stockholders. In July, 1881, Camden and Thompson assigned their stock, 375 shares,

to R. A. Lancaster and F. J. (O.) French, and on Sept. 1st, 1881, Lancaster and French assigned to—

C. H. Phinnizy	150 shares.
J. H. Dooley	100 "
J. P. Branch	125 "

On Oct. 4th, 1881, James H. Dooley transferred to A. S. Buford 50 shares and retained 50 shares.

On Oct. 17th, 1881, C. H. Phinnizy transferred to Mrs. Ann E. Branch 50 shares.

On Oct. 18th, 1881, John P. Branch transferred to R. R. Bridges 50 shares.

338 Mr. Stuart testifies that he and H. Phoebus had purchased Geo. L. Peyton's stock, but no transfer was ever made; but assuming that the transfer ought to have been made, the following are—

Present Holders of Original Stock.

W. A. Stuart	375
H. M. Mathews	375
J. H. Dooley	50
A. S. Buford	50
Jno. P. Branch	50
R. R. Bridges	75
Ann E. Branch	50
C. H. Phinnizy	100
W. A. Stuart, H. Phoebus	375
	1,500

Present Holders of Additional or Second Issue of Stock.

John W. Kerr	100 shares.
Wm. A. Stuart	250 "

besides the certificate No. 22 for 250 shares issued to John P. Branch and afterwards returned and cancelled, as set forth in Com'r Gallaher's 2nd report and in the depositions.

Ninth.

I found on record in the clerk's office of Greenbrier Co. court a deed of trust from the Greenbrier White Sulphur Springs Co. to Thomas Tabb, trustee, dated Feb. 24th, 1883, and recorded on March 7th, 1883, conveying the "two-acre lot" to secure $25,000.00 of bonds. The original of this deed I return herewith, together with an affidavit made by Wm. A. Stuart on March 17th, 1887,
339 stating that no bonds were ever issued under said deed.

I report that said deed is not a lien upon said property and ought to be released or decreed to be null and void.

Recapitulation of Debts.

Vendor's lien, including debts paramount thereto, but counted as a part thereof:			
1. Amount due com'rs in Gay suit	$183,085 86		
2. Bank of Lewisburg	30,503 86		
3. H. G. Dulaney, Jr.	203,250 00		
4. Wm. A. Stuart, bal.	116,052 02		
		$532,890	74
Mechanics' lien:			
5. Chas. Ogle, for G. W. Palmer		4,850	60
Specially preferred claims:			
6. Wm. A. Stuart, for insurance, &c.		4,004	50
Judgments before April, 1883:			
7. Aggregate of these, pp. 11 & 12, *ante*		2,070	69
Judgments, April, 1883:			
8. Aggregate of these. See p. 13, *ante*		2,625	29
Unsecured debts:			
9. Amount due sundry 58 creditors. See pages 16, 17, and 18, *ante*		57,169	85
9'. Unsecured debts of Wm. A. Stuart:			
1. Debts on page 19 and the 1st item on page 20	$120,389 36		
2. W. A. Stuart's debts, No. 24, on page 20	20,569 12		
3. Wm. A. Stuart's debt, No. 25, page 20	65,375 00		
		$206,333	48
10. J. N. Camden's debt, p. 21		10,284	56
11. Merchants' National Bank of Richmond		12,800	00
12. Thos. Branch & Co., debts		24,814	95
13. Mortgage debts:			
1. John W. Kerr, p. 26	$26,150 00		
2. Wm. A. Stuart, "	4,576 25		
3. C. R. Mason & Co., p. 26	1,961 25		
		$32,587	50
340 Note:			
Add W. W. Gordon's unsecured debts. See p. 35 (—)		1,550	00
Aggregate		$891,862	16

Tenth.

If the court should be of opinion that Wm. A. Stuart is to be held bound for his subscription to the 250 shares of stock taken on April 28th, 1883, then it would be equitable and proper to discharge his liability therefor by applying thereto one-half of the amount, or $25,000 of the debts which he "turned in" to the company, as set forth in Commissioner Gallaher's report, and then said amount would have to be subtracted from the debt reported as due to him—

(No. 25, on p. 20, *ante*) of	$50,000 00
Deduct	25,000 00
Balance	$25,000 00
Interest to June 1st, 1887	7,687 50
Total	$32,687 50

instead of $65,375.00, as before stated in item or debt 25, page 20 of this report.

Eleventh.

It is difficult to say what would be exact basis for distribution of the rents of the White Sulphur property which have accumulated or may accumulate in the hands of the receiver. These rents are the joint product of the use of the real estate and of the furniture, and it is only possible to approximate the relative value of each class of property. Upon due examination of all the papers, and under all the circumstances, I have arrived at the conclusion and report that, after payment of expenses, if there be any balance of said fund left, it should be divided between the real-estate fund and the
341 personalty fund, in the proportion of 80% to the real estate and 20% to the personalty. This division, I think, would be just and fair.

Twelfth.

I respectfully ask that provision may be made for payment of H. B. Boudar, the expert book-keeper, for his examination of the books, made under my direction. I recommend that he be paid one hundred dollars for his services.

Thirteenth.

After this report was written down to this point, I discovered that the debt due to Col. W. W. Gordon by the defendant company has not been proven in the cause, save as incidentally mentioned in Col. Peyton's deposition; but the said debt was proven before Com'r Ruffner in the suit at Charleston, W. Va., and the amount due Col. Gordon is aggregated, as of June 1st, 1887, $1,550.00, with interest on $1,250.00, the principal, from that date till paid. This debt is

unsecured and should be added to the list of unsecured debts heretofore mentioned.

Respectfully submitted.

(Signed) WM. JOSIAH LEAKE,
Special Commissioner.

Richmond, Va., June 1, 1887.

341½ Statement of expenses incurred by Com'r Leake in execution of decrees of June 26th, 1886, and January 29th, 1887, in suits of "Stuart, &c., *vs.* Greenbrier White S. S. Co. and *als.*" and "Wm. Knabe & Co., who sue, &c., *vs.* same."

1886.			
July —.	Cash paid, express on papers from clerk to com'r		90
Aug. 4.	Paid for combination lock-box for papers	$12	00
" 30.	" com'r expenses to and from White S. Spr'gs and board while there, 9½ days	41	50
1887.			
Feb. 1.	" "State" for publication of notice	40	00
"	Parkersburg State Journal, publication and tele'm	36	90
Mar. 8.	Paid expenses of com'r to White S. S. & Lewisburg, to lay off two-acre lot and to examine records	21	20
Apr. 7.	Paid J. P. Ake & A. A. Cox for service, $5 each	10	00
May —.	" J. Y. Moore for copies	3	40
"	" C. B. Buster " "	2	50
"	" for money orders		10
"	" for binding depositions and reports, hauling papers, and expressage to clerk at Parkersburg	2	80
	Total	$171	20

CR.

By cash from A. L. Boulware, receiver, to pay these expenses, per decree $171 20

342 The depositions returned by Special Commissioner Leake with his report of June 1, 1887, are in words and figures as follows:

GREENBRIER WHITE SULPHUR SPRINGS,
WEST VIRGINIA, *August* 11, '86.

In the United States Circuit Court for the District of West Virginia.

WM. A. STUART, Who Sues, &c., Complainants,
vs.
GREENBRIER WHITE SULPHUR SPR'S CO. and Others, Def'ts,

and

WM. KNABE & Co., Who Sue, &c., Compl'ts,
vs.
SAME, Def'ts.

Proceedings Before W. J. Leake, Special Master Com'r under Decree of June 26th, 1886.

Pursuant to notice duly published in the Richmond "State" and Parkersburg "State Journal," personal notice to all parties resident in the district of West Va., according to equity rule No. 75, the com'r proceeded to hear the cause.

Present: Wm. A. Stuart, complainant in first suit, in person; H. H. Marshall, Tazewell Ellett, counsel for complainants in second cause and for creditors; Chas. S. Stringfellow, counsel for John W. Kerr and the Merchants' National Bank of Richmond, Va.; A. F. Mathews, counsel for J. W. Mathews, per. rep. of H. M. Mathews and the Bank of Lewisburg and judgment creditors.

After an examination of the papers and an informal conference the cause is adjourned until to-morrow at 11 a. m.

W. J. LEAKE, *Com'r.*

343 GREENBRIER WHITE S. SPRINGS,
WEST VA., *August 12th*, 1886.

Met pursuant to adjournment.

Present: Same counsel and parties as on yesterday, but Mr. Mathews did not remain to be present at the taking of the following deposition.

WM. A. STUART, being duly sworn and being called as a witness by H. H. MARSHALL and TAZEWELL ELLETT, counsel for creditors, being first duly sworn, deposes and says as follows:

1st question by Judge Marshall. In the case of "W. A. Stuart and others *vs.* The Greenbrier White Sulphur Springs Co. and others" you were introduced as a witness by the attorneys for creditors and gave your deposition to be read in that cause, and in the suit of "Hodges and Bros. *vs.* the same corporation and others," at Richmond, Va., on April 22nd, 1885, and some succeeding days, all of which will appear in the paper filed with Com'r Callaher's 2nd report in said first-named cause, marked "depositions, exhibits, &c," and filed in court on May 30th, 1885. Have you recently read that deposition and will you reiterate now here the answers which you then made, as in said paper recorded, to the interrogatories then

propounded to you? If so, please state so, and if you wish to change any of those answers in any respect please state what changes you desire to make.

Answer. I have read that deposition to-day and I reiterate the answers contained therein, and no changes occur to me as proper to be made, except such changes as are made necessary by subsequent events. The facts as there stated were true as I verily believe.

2nd question. What "subsequent events" took place which make it proper that you should change any one or more of your said answers, and what changes do those "subsequent events" call for?

344 Answer. I will explain. Before the giving of my last deposition above mentioned I had given two others, one before Com'r Ruffner in what was known as the "Hodges" case, and the other before Com'r Gallaher in the case of "W. A. Stuart, who sues, &c., *vs.* Greenbrier White S. Spr's Co. and *als.*, and returned by Com'r Gallaher with his first report, both of which depositions I now repeat and adopt. In the last-named deposition I referred to a pending suit of George L. Peyton & Co. *vs.* myself and others for a large amount of furniture which they claimed (the plaintiffs) that they had sold to me individually in the spring of 1880. This furniture was received and used by the Greenbrier White Sulphur Springs Co. from the spring 1880 until its affairs went into the hands of the receiver. This suit of Geo. L. Peyton & Co. was defended on the ground that it was not an individual liability, and that Geo. L. Peyton & Co. had accepted the corporation known as the Greenbrier White S. Springs Co. (the present defendant) as the real purchasers of the property. In my said deposition last mentioned I stated that this liability would probably exceed $15,000, and that the company would be liable for whatever it might be. Since that deposition was given and since my last deposition was given in this case (the 1st case) that suit, which was pending in the circuit court of Augusta county, Va., has been decided and a judgment or decree was rendered against Peyton, Camden, Thompson, Mathews, and myself, as partners, for $28,000 and upwards, as will appear by an abstract from the decree, which I will procure and file with the com'r as a part of this deposition, to be marked Exhibit "A" herewith. Of this decree J. N. Camden and W. P. Thompson have, together, paid one-third; I have paid one-third, and proceedings are pending to enforce the collection of the remaining third from Geo. L. Peyton. This is therefore a debt against the Greenbrier White S. Springs Company not distinctly ascertained before. If it be held that there

345 is a liability on the individual stockholders for stock subscribed in 1880 and not fully paid up, the amounts paid by Camden, Thompson, and myself should go to their exoneration from such liability so far as it will go or so far as it may be necessary, and so as to the remaining unpaid third of said decree, by whomsoever it may be hereafter paid and to the extent that the amounts paid by them on said decree shall be applied by the order of the court to the making up of any deficiency in the payment of unpaid stock the debt against the company will be reduced. On the other

hand, if there is no liability upon us on account of the stock these payments made and to be made, as ascertained by said decree, are ascertained debts against the company which were unascertained at the time I gave my former depositions.

I also wish to modify my former depositions in the following respect:

In my former depositions I claimed the sum of $3,348.20 for insurance paid or secured by me. Since then, under orders or sanction of the court in the first of these causes, that amount has been paid by the receiver, and consequently I have no such claim now. Those are the only changes that occur to me as proper to be made.

3rd question. You have stated in your deposition, given before Com'r Gallaher, that there was no organization whatever of the corporation known as the Greenbrier White Sulphur Springs Company, except that which was made on 29th December, 1880, at the city of Baltimore, under a charter which bears date the 6th December, 1880. Do you adhere to this statement? If not, please state in what particular it is incorrect.

Answer. I adhere to what I stated before, though it is not accurately stated in the question. I meant to say then and I say now that our organization was irregular, not having organized under the first charter granted, and that we were only a legally incorporated company from December, 1880. My recollection is that the capital stock subscribed under the first charter was $500,000.

346 4th question. Was any part of it paid up; and, if so, how much?

Answer. It was not paid up as stock, though money was advanced by the parties named in the charter from time to time during the season of 1880, as the needs of the business required.

5th question. What became of that charter? Can you produce a copy of it, or can you tell the commissioner where he can get it or a copy of it?

Answer. I do not know, nor can I tell the com'r when he can procure a copy or the charter. I never had a copy myself, and the original was only in my hands on one occasion for a short time for my acknowledgement.

6th question. Was that charter obtained from the secretary of state in the same way that the last charter was?

Answer. It was.

7th question. When did the irregular organization which you speak of, and which operated the White Sulphur Springs during the season of 1880, commence its operations?

Answer. Early in the spring of 1880.

8th question. As I understand you, money was advanced by the purchasers of the White Sulphur Springs property, to wit, by J. N. Camden, W. P. Thompson, Geo. L. Peyton, Henry M. Mathews (becoming interested subsequent to the purchasers), and in which you were also interested to the extent of one-fourth, for the purpose of carrying on the operations of the springs during the season of 1880. Do not the books of those operations show the amounts that were thus paid prior to December 6th, 1880; and, if so, please look at

them as they are now shown you and state what was the amount of money actually paid in by said purchasers and yourself.

347 Answer. I have examined the books, and, while they do not accord exactly with my memory, they may be right. The accounts show that $70,000 was paid in prior to December 31, 1880, and on that day, $50,000 of it having been paid prior to Dec. 1, 1880, that is to say—

William A. Stuart paid in for himself	$17,500 00
" " " " G. L. Peyton	17,500 00
H. M. Mathews " " according to my memory and according to the books, paid in only	16,500 00
J. N. Camden and W. P. Thompson together (each paying one-half)	17,500 00

On Dec. 23rd, 1880, $20,000 of the above amount was to have been paid in, but H. M. Mathews only paid $3,000, so that the amount actually paid was $19,000 instead of $20,000.

9th question. I find that in the certificate of incorporation a copy of an agreement to become a corporation by the name of the Greenbrier White Sulphur Springs Company is therein copied, and that in that agreement Geo. L. Peyton, J. N. Camden, W. P. Thompson, and H. M. Mathews, and yourself agree to form a corporation, the capital stock of which is fixed at $150,000, and that the whole had been subscribed for by said persons, and that $50,000 of the subscription had been paid. See the minutes of the Greenbrier White Sulphur Springs Company, West Va., pages 5 and 6; and also that the privilege of increasing said capital stock was also provided for in said agreement. When this declaration was made as to the payment of the $50,000, was not reference had to the $50,000 which was paid in during the season of 1880, as you have already stated, by the subscribers?

Answer. That is my understanding.

10th question. To whom was that money paid; to what
348 person—the secretary, clerk, or to whom—and who gave receipts for it?

Answer. I think some $16,000 was paid to the commissioners of sale, and the proper vouchers turned into the treasurer. The remaining sums were paid, I think, to the treasurer. J. W. Mathews was treasurer part of the time. H. M. Mathews was treasurer a part of the time, and one or the other treasurer received the money and, I presume, gave receipts, and at all events the several payments were credited on the books of the company.

11th question. In order to make up the payment in full of the capital stock does it or not appear from the books that the $80,000 was charged to profit and loss as of Dec. 31, 1880?

Answer. I refer to the profit and loss account on the ledger of the company, and I see on the date of Dec. 31, 1880, profit and loss charged with capital stock, $80,000 (see Ledger A, p. 502). On Oct. 30th, preceding this charge, I see profit and loss charged with $37,572.44 for various expenditures under the head of "sundries,"

and on the same 30th Octo., 1880, I see credited to profit and loss for receipts from hotel, &c., under the head of "sundries," $94,211.35. These figures show a profit on that year's business of $56,638.91; and on Dec. 31, 1880, I see to the credit of profit and loss the sum of $23,361.09 for estimated increase in value of the springs property by improvements made on grounds and buildings. These entries quoted by me balance the account of profit and loss for the year 1880. I now give the items as they appear on the book:

Profit and Loss.

1880.			1880.		
Octo. 30. Sundries	(52)	$37,572 44	Oct. 30. Sundries	(52)	$94,211 35
Dec. 31. Capital stock	(62)	80,000 00	Dec. 31. Do.	(61)	23,361 09
		$117,572 44			$117,572 44

By consent, the further taking of these depositions is adjourned to August 13th, 1886, at same place, at ten a. m.

WM. J. LEAKE, *Com'r.*

349 GREENBRIER WHITE S. SPRINGS, *August 13th*, 1886.

Met pursuant to adjournment.

Present: Same counsel and parties as on yesterday, except that Mr. Mathews is absent.

WILLIAM A. STUART again took the stand and his examination by Mess. MARSHALL and ELLETT was resumed:

12th question. The profit and loss account, of which you have furnished a copy in your last answer, shows, you say, a profit of $56,638.91 for the operations of the season of 1880. Were all the debts contracted for the season of 1880 paid at the end of the season or during the same, or was there not outstanding debts contracted during that season remaining unpaid? And please state also whether there was any money on hand at the end of that season, and if the affairs of the company did not require, after the end of the season, that the stockholders should pay up $5,000 for the subscribers to each one-fourth of the capital stock to meet pressing liabilities, and state also whether, after applying the $20,000, or, to speak more accurately, the $19,000 paid up by the stockholders, debts due from the company or partnership did not still remain unpaid. In this question I do not refer to the amount of purchase-money due for the purchase from you of the White Sulphur Springs property, but I refer only to what may be called the "floating" debt.

Answer. In answer to this question I cannot speak with particularity or accuracy. I lived far from the springs, and spent very little time there. I have never been familiar with the books of the Greenbrier White Sulphur Springs Co. Being a stockholder and liable to assessments to meet the wants of the company, I have a general knowledge of the business of the company aforesaid in the

year 1880, and can give my impressions, if desired. The
350 counsel (Judge Marshall) not desiring these impressions, I decline to give them.

13th question. Please look at the ledger "A," now shown you, and state whether, upon the account of bills payable, on page 1, it does not appear that there were two notes—one for $6,550.83 and one for $6,550.84—and one note for $10,000, and two notes for $5,000 each, executed or drawn in the year 1880, and which were then outstanding, and which were subsequently renewed.

Answer. I have examined the book, and I find the five notes mentioned. I think the three first were executed for debts then outstanding. I think the other two were executed by the company, and endorsed by Camden and myself, for the purpose of raising money.

14th question. I request the com'r to make a copy of the entries of the bills payable above mentioned. (The com'r makes the copy, and returns it herewith as Exhibit "Bills Payable" No. 1.) Were there not other debts contracted in 1880, and remaining unpaid on Dec. 31, 1880, for which no notes were given by the company, and which consequently would not appear in the account of bills payable?

Answer. I think that very likely, because work by a large force was going on from April, 1880, through the summer, fall, and succeeding winter. The notes given to Basshor & Co. were for work that he was engaged on during the summer and fall of 1880. They did a large amount of plumbing, steam-fitting, laying down drain pipes, &c.

15th question. Was there not a costly building erected at the White Sulphur Springs contracted for during the fall of 1880 or winter of 1880–'81; and was it not contemplated to have such building erected, even though not contracted for, prior to Dec. 31, 1880? And if such building was contracted for, was it subsequently
erected; and, if so, when; and what was the cost thereof, as
351 near as you can state it? And were not other permanent improvements contemplated at the time mentioned and subsequently carried out; and, if so, at what cost, as near as you can state it?

Answer. From the time the property was purchased, in the spring of 1880, large and valuable improvements were contemplated, and large amounts were expended in the summer of 1880. About Dec., 1880, the large additions to the new hotel was contracted for by the company, at a cost of about $42,000, as well as I remember. This addition was completed in time for the season of 1881.

Large amounts of new furniture were bought and placed upon the property also. About $50,000 — of furniture was purchased in the summer of 1880.

16th question. Was that furniture all paid for on Dec. 31, 1880?

Answer. I think it was all paid for then. The books show that $45,541.54 is charged to furniture account that year, but that does not embrace amounts paid Geo. L. Peyton & Co. for their furniture, bought in that year, amounting to $8,293.24.

17th question. How much was the balance due by you to Geo. L. Peyton & Co. for the furniture bought by you of him that year?

Answer. It was the subject of litigation as to whether the Greenbrier White S. Springs Co. had bought that furniture at all or whether it was an individual liability of my own. I contended that the company had bought it, and that Geo. L. Peyton had accepted the company as purchaser. Camden and Thompson contended that the company had agreed to take such portions of it as they desired at a valuation by disinterested men, and that such valuation never had been made and the company was not bound. They, Camden and Thompson, also contended that there was no individual liability on them. The circuit court of Augusta
352 county decided that while I had bought the property of Geo. L. Peyton & Co. in my own name, that I had bought it for myself and associates, with their knowledge and consent, at a time when there was no legal organization of the Greenbrier W. S. S. Co. as a joint stock company, and that as individuals we must pay for it, and the court decreed accordingly, but deducting what had been paid by the company, as above stated. The whole of said property, however, passed into the possession of the company.

18th question. You have not stated what was the cost of the permanent improvements contemplated in 1880 and subsequently put upon the property, except the cost of the building, $42,000. Please state as near as you can the cost of other permanent improvements which were thus contemplated and subsequently put upon the property.

Answer. I think in 1880 and 1881, and chiefly in 1880, about $35,000 was so expended. That is the best estimate I can now make.

19th question. Was not the building you speak of and the other permanent improvements erected and put upon the part of the real estate on which you retained the vendor's lien?

Answer. Yes.

20th question. You furnished the president of the company with a statement of the debts that you paid, amounting to some $51,424.75 or thereabouts, and which you claimed was in satisfaction of $50,000 of bonds which you purchased and the subscription to $25,000 of stock. Can you state which of those debts, if any, were contracted in the year 1880?

Answer. I not only exhibited to Gov. Mathews the list referred to, but the debts themselves duly receipted or assigned to me. I cannot say that any of these debts were in existence in 1880. It is barely possible that the two last debts mentioned in the list,
353 viz., that to Basshor & Co. and the Bank of Lewisburg, existed in 1880. I am pretty sure the others did not.

21st question. So far as you know, please state whether the company, the day it was organized, had any money whatever in its treasury.

Answer. I cannot say.

Cross-examined by Major STRINGFELLOW:

1st question. Are you acquainted with Mr. John C. Wood, who was the secretary of the company in 1882; if so, do you know his handwriting?

Answer. I am acquainted with him and I do know his handwriting.

2nd question. Please look at the unsigned receipt dated Richmond, Va., April 29th, 1882, and which is now shown you, and state in whose handwriting it is.

Answer. I have looked at the said paper, and it is in the handwriting of John C. Wood, former secretary of the company.

3rd question. Please look at the two letters now shown you, addressed to John P. Branch and dated respectively Sept. 11th and 16th, 1882, signed John C. Wood, and state in whose handwriting they are.

Answer. I have looked at those letters, and they are in the handwriting of John C. Wood.

4th question. Please look at two other letters now shown you, addressed to John P. Branch, dated respectively July 5th and Sept. 27th, 1882, and signed Henry M. Mathews, and state in whose handwriting they are.

Answer. I have looked at those letters and they are in the handwriting of Gov. Henry M. Mathews, the president of the Greenbrier White Sulphur Springs Co.

354 5th question. Please look at the sight draft dated May 1, 1882, for $12,858.92, drawn on Messrs. Thomas Branch & Co., Richmond, Va., in favor of the Bank of Lewisburg, endorsed by J. W. Mathews, cashier of said bank, cancelled and stamped paid May 3rd, 1882, and state whether the signature thereto is that of Henry M. Mathews, the president of said company.

Answer. I have examined the paper described, and the signature is in the handwriting of Henry M. Mathews, president of the said company.

(NOTE.)—Counsel for the Merchants' National Bank of Richmond and J. W. Kerr here requests the com'r to make copies of the several papers shown the witness, Wm. A. Stuart, on the foregoing cross-examination, and to file the said copies as a part of this deposition, to be marked Exhibits "J. W. K. Nos. 1 to 6," inclusive, and the com'r accordingly makes said copies and files the same so marked accordingly.—W. J. Leake, com'r.

The com'r is also requested to copy the entries on the cash book of the Greenbrier White S. S. Co., pages 206 and 207, and also to note the fact that no entry appears on Ledger A in the cash account thereon later than March 31, 1882. The com'r accordingly makes the copy requested and files same as Exhibit "J. W. K. No. 7;" and the com'r now notes the fact, at the instance of Mr. Stuart, that the cash book has been balanced from time to time down to —.

Major Stringfellow here states that he expects to introduce further evidence to connect the exhibits introduced with his clients, J. W. Kerr and the Merchants' National Bank of Richmond, and there-

upon it was agreed that counsel for the creditors may make any exception to the introduction of said evidence after such further evidence shall have been introduced.

The counsel for the complainants here ask the com'r to note the fact that the accounts of the company do not show the receipt
355 by the Bank of Lewisburg of the sum of $12,858.92, mentioned in the drafts filed and referred to in 5th question above to Wm. A. Stuart.

The case is now adjourned to August 14th, 1886.

WM. J. LEAKE, *Com'r.*

GREENBRIER WHITE S. SPR'S, WEST VA.,
August 14th, 1886.

Met pursuant to adjournment.

Present: Same counsel as on yesterday, Wm. A. Stuart in person.

WM. A. STUART, the witness under examination at the adjournment on yesterday, again took the stand.

Re-examination of Mr. STUART by Judge MARSHALL:

1st question. Please state, as near as you can, what was the actual value of the personal property, consisting of furniture, vehicles, horses, cattle, &c., and implements, &c., purchased by you, as you supposed, for and on behalf of the company, but which you state was held by the circuit court of Augusta as having been purchased for yourself and associates at the time you purchased it of Geo. L. Peyton & Co.

Answer. I suppose the property, inventoried and valued by disinterested parties, would have reached $30,000 or $35,000. A good deal of it, however, was undesirable property, and would not have been bought except as a means of facilitating the formation of the new company and the transfer of the real estate. As to $\frac{7}{16}$ths of the property, we agreed to pay, I think, at the rate of $35,000; as to the remainder, which represented Geo. L. Peyton's interest in it, we were to take it at valuation. The valuation was never made, and we were held to pay $35,000 for the whole of it as of the time of the purchase.

2nd question. Was there not a large amount of the furniture unfit for use; and was it ever used, except to a small extent, in the
356 year 1880; and would it have sold in the open market at anything like the price agreed to be paid for it; and was not that enhanced price paid for it in order to prevent Geo. L. Peyton & Co., or the members of that firm, from bidding at the judicial sale made of the White Sul. property; and was not it agreed between yourself and that firm that you would purchase the property at the price agreed upon if they agreed, as they did do, not to bid at said sale?

Answer. In bulk there was a large amount of the furniture of Geo. L. Peyton & Co. unfit for use, and much of this description was never used. I refer particularly to some old-fashioned bedsteads. Much the larger portion of the Geo. L. Peyton & Co. furniture went

into use by the company, and what has not been used up remains in use to this day. The property, if sold at auction, would, I doubt not, have sold for less than valuation, or the amount we agreed to pay. The property or furniture of Geo. L. Peyton & Co. was not bought by the springs company until after the sale of the springs to the new company in Mar., 1880. It is true that one or two of the firm of G. L. Peyton & Co. did threaten to resist the confirmation of the sale. I think Mr. Camden either had no apprehension of their success in that direction or was indifferent. I was anxious for confirmation, and partly from that fact and partly from the fact that G. L. Peyton was connected both with the buying and selling of the furniture and represented that its value was in excess of $35,000 and was willing for his interest to be valued I consented to the purchase of the property and it was made.

3rd question. Did not Geo. L. Peyton & Co. make a distinct agreement not to oppose that confirmation of the sale in consideration of your purchase of said personal property at the price agreed upon?

Answer. I do not remember that there was any distinct agreement, but it was so manifestly to their interest not to oppose it, after the sale of their furniture, that no apprehensions were felt on that sub-
357 ject by the new company.

Memorandum.

The counsel for complainants in second suit and for general creditors except to the evidence introduced on the cross-examination of Wm. A. Stuart on yesterday upon the ground that John P. Branch is not here respresented by counsel and the said evidence relating to transactions with him is irrelevant certainly at this time when it is connected with J. W. Kerr and the Merchants' National Bank of Richmond. As the memorandum made by their counsel states will be, the right is reserved them to except further to said testimony, unless it is properly and legitimately shown to be relevant by such subsequent testimony; and they further except specially to the introduction of an unsigned paper, the copy whereof marked "J. W. K. No. 1" is filed, as incompetent testimony in any aspect of the case.

Memorandum.

At this point the counsel present indicated that they had no further questions to ask the witness, Mr. Stuart, and the deposition is kept open by the com'r in order that he may ask any further questions he may deem proper.

By consent, the further taking of the depositions in this cause is adjourned to the 16th inst., at same place.

WM. J. LEAKE, *Com'r.*

WHITE SULPHUR SPRINGS,
GREENBRIER CO., W. VA., *August 16th*, 1886.

Met pursuant to adjournment.

Present: Wm. A. Stuart in person; Judge H. H. Marshall, counsel for creditors, &c.; Chas. S. Stringfellow, counsel for J. W. Kerr and Merchants' National Bank of Richmond.

358 Mr. WM. A. STUART was again called to the stand and his examination resumed:

1st question by com'r. If you have in your possession a balance-sheet showing the result of the business of the White Sulphur Springs Co. for the year 1880 will you please produce it and file it with the com'r and state by whom said balance-sheet was taken from the books?

Answer. I have such a statement and now produce it and ask the com'r to take a copy of it and file it herewith, marked "Balance-sheet, Octo. 30, 1880." This balance-sheet is in the handwriting of Mr. Morrison, who was then the book-keeper of the Greenbrier W. S. Springs Co., and it was evidently taken off the books by him. The books are in the same handwriting.

By consent the further taking of these depositions is adjourned until to-morrow morning at ten a. m.

WM. J. LEAKE, *Com'r.*

AUGUST 16TH, 1886.

JOHN M. PRICE, a witness of lawful age, being first duly sworn, deposes and says as follows:

1st question by Judge Marshall. What is your age, occupation, and residence?

Answer. I am aged 28 years, I reside in the city of Richmond, Virginia, and I am a clerk by occupation.

2nd question. Are you acquainted with John F. Glenn, the cashier of the Merchants' National Bank of Richmond; and, if so, do you know his handwriting?

Answer. I am acquainted with John F. Glenn, and I am familiar with his handwriting. I have been employed with him in said bank, and I know his writing.

359 3rd question. Please look at the book now shown you, being the scrip or stock certificate book of the Greenbrier White Sulphur Springs Co., and examine the words on the stub to certificate No. 21 at the end of the printed word "certificate" and state in whose writing do you think the words "issued in lieu of the similar certificate to Jno. W. Kerr" are; and also look at the certificate No. 21 for one hundred shares of stock in said company, dated 28th of April, 1882, in name of Jno. P. Branch, Esqr., and from which the signatures of the president and secretary of said company have been cut out, and which mutilated certificate is pinned in said book to the stub No. 21, and you will see endorsed across the back thereof the following words, to wit: "Returned by Jno. P. Branch, who rec'd therefor similar certificate to Jno. W. Kerr." State, if you know, in whose handwriting the said words are written.

Answer. I think the words referred to on said stub and the words endorsed on the back of said certificate No. 21 are in the handwriting of Jno. F. Glenn, cashier of the Merchants' National Bank of Richmond. In May, 1882, or April, 1882, Mr. Glenn may

not have been cashier of the bank; if not, he was one of its principa clerks.

And further this deponent saith not.

(Signed) JOHN M. PRICE.

This cause is adjourned until to-morrow morning at ten o'clock.

WM. J. LEAKE, *Com'r.*

WHITE SULPHUR SPR'S, *August* 17, 1886.

Met pursuant to adjournment.

Present: Same counsel and parties as on yesterday.

GEORGE C. LAFFERTY, a witness of lawful age, introduced by Judge Marshall, counsel for complainants in second suit, being first duly sworn, deposes and says as follows:

360 1st question by Judge Marshall. What is your age and residence and occupation? And state where you have been employed in the city of Richmond for a few years past.

Answer. I am 25 years old; reside in Richmond, Va., and I am a stenographer. I was employed in the office of Thomas Branch & Co. for a few years past.

2nd question. Is the office of Thomas Branch & Co. in any way connected with the Merchants' National Bank of Richmond? If so, state how.

Answer. It is in the rear of the Merchants' National bank, on the same floor of the same building, and one member of the firm, Mr. Branch, is president of the bank, and the other member, Major F. R. Scott, is vice-president of the bank.

3rd question by same. Will you please look at the book now shown you, being the scrip or stock certificate book of the Greenbrier White Sulphur Springs Company, and examine the stub to stock certificate No. 21 and the written words "Issued in lieu of this similar certificate to Jno. W. Kerr," and state, if you know, in whose handwriting the said words are written; and also look at the cancelled certificate No. 21, for one hundred shares of stock of Greenbrier White Sulphur Springs Company in name of John P. Branch, dated 28th April, 1882, and you will see written across the back thereof the following words, to wit, "Returned by Jno. P. Branch, who received therefor similar certificate to Jno. W. Kerr," and please state in whose handwriting the said words are; and please look at the stub to certificate No. 23, for 100 shares stock, dated April 29, 1882, issued to Jno. W. Kerr, Esq., and state in whose handwriting are the words and figures written on the said stub.

Answer. I think all of the writing and figures embraced in the enquiry are in the handwriting of John F. Glenn, the cashier of the Merchants' National Bank of Richmond.

361 4th question by same. What opportunity have you had to become acquainted with the handwriting of said John F. Glenn?

Answer. Nearly all the foreign mail of the bank went through my hands and nearly all of its drafts, and these were in his hand-

writing, and during my employment at the office of Thomas Branch & Co. I was very often in the bank and saw his writing almost daily.

5th question. Did you ever see Mr. Glenn write?

Answer. Many and many a time.

And further this deponent saith not.

(Signed) GEO. C. LAFFERTY.

JOHN C. WOOD, a witness of lawful age, being first duly sworn, deposes and says as follows:

1st question by Judge Marshall, counsel for creditors. What relation did you bear to the Greenbrier White Sulphur Springs Company in the year 1882?

Answer. I was its secretary and treasurer and book-keeper. I was with that company continuously from Dec. 26th, 1881, to the 9th or 10th Dec., 1882.

2nd question. Was there any balance due to you for salary as secretary and treasurer and book-keeper from the company? If so, hand to the com'r an account thereof.

Answer. There was a balance due to me of $200, of which I now hand the com'r an account to be filed and marked Exhibit "J. C. W."

3rd question. Did you, as secretary or treasurer of said company, countersign the bonds, which were executed by the company, provided for in the deed of trust or mortgage to Carrington & Gordon, as trustees?

Answer. I did.

362 4th question. Where were you when you countersigned them and when?

Answer. At the Exchange hotel, Richmond, Virginia., on the 28th or 29th April, 1882.

5th question. Did you sign the coupons attached to the bonds?

Answer. I did not sign them, but a *fac-simile* of my signature was lithographed upon the coupons.

6th question. You are shown the scrip book or book of the certificates of stock of said company. Please look at certificate No. 21, and which you will find pinned in said scrip book to the stub No. 21, dated April 28th, 1882, for 100 shares issue dto Jno. P. Branch, and say whether you signed that certificate as secretary.

Answer. I did.

7th question. Said certificate has the names of the secretary and president cut out. Do you know who cut out from said certificate your name and that of the president.

Answer. I do not.

8th question. You are shown a certificate, No. 22, for 250 shares to Jno. P. Branch, Esq., dated April 29th, 1882, with the names of the president and secretary, you being the secretary, cut out, and the names so cut out are pinned to the certificate and the certificate pinned to the stub No. 22. Please say whether you signed that certificate as secretary, and whether Henry M. Mathews signed it as president, and whether you recognized your own signature and that of Mathews on the two slips of paper cut from said certificate and pinned to the same as genuine signatures.

Answer. I signed it as secretary and Henry M. Mathews signed it as president, and I recognize the slips pinned to the certifi-
363 cate as bearing genuine signatures.

9th question. Have you any knowledge of how your name and that of Mathews came to be cut from that certificate and pinned back to stub No. 22 in said scrip book or by whom that was done?

Answer. I have no knowledge of the matter.

10th question by same. When did you first know that these things had been done—I mean the mutilation and pinning back of said certificates?

Answer. I knew nothing of them before to-day.

11th question. Please look at stub No. 23 for one hundred shares dated April 29th, 1882, and state what you know as to the certificate cut therefrom, having been issued to John W. Kerr, Esq., as set forth on said stub, and state whether the writing upon said stub was made by you.

Answer. The writing on the stub was not made by me, and I do not know by whom it was made. I don't think I know anything about the issue of said certificate to Jno. W. Kerr. I have no recollection of signing any such certificate, though I may have done so. The certificate will speak for itself.

12th question. Are not the stubs No. 21 for 100 shares, dated April 28th, 1882, issued to John P. Branch, of Richmond, Va., and the stub No. 22 — 250 shares, date- April 29th, 1882, issued to J. P. Branch, of Richmond, filled up by you?

Answer. They are, but there is a memorandum at the foot of stub No. 21 in these words, "Issued in lieu of this similiar certificate to Jno. W. Kerr," which is not written by me, and I do not know by whom it was written.

13th question. I find in said book stubs Nos. 14, 15, 16, 17, 18, 19, and 20, aggregating 250 shares issued to Wm. A. Stuart, each
364 bearing date the 28th April, 1882. Were those stubs filled up by you, and were the certificates signed by H. M. Mathews, as president, and yourself, as secretary, and delivered to said Stuart?

Answer. The stubs were filled up by me, and I have no doubt the certificates were signed by Gov. Mathews and myself, who were together in Richmond at the time, and we had this scrip book there, and the certificates were doubtless delivered to Mr. Stuart, as I see he receipted for the scrip.

14th question. How long did you stay in Richmond on the occasion of your signing these certificates and filling up these stubs?

Answer. I arrived in Richmond in the morning and left on the evening of the same day. I left the scrip book and the signed bonds and the signed scrip for 250 shares in name of Jno. P. Branch all with Gov. Mathews in Richmond, and I have never seen that scrip book from that time until it was shown to me to-day.

15th question. Do you know, and, if so, state, how many of the bonds in amount Wm. A. Stuart agreed to take and at what price and how much stock he agreed to take and at what price. Whether you know it from what occurred at the time or whether you know

it from what Mr. Stuart told you at or about the time you were in Richmond, or shortly after?

Answer. I understood that Mr. Stuart was to take $50,000 in bonds at 50 cents and the 250 shares of stock which Gov. Mathews and myself signed at the time, as per stubs Nos. 14 to 20, inclusive, at par. My knowledge is not derived from anything told me by Mr. Stuart, but from what I was told by Governor Mathews and what was done at the time.

16th question. Please answer the same question, substituting the name of John P. Branch for that of Wm. A. Stuart.

Answer. My understanding was that Mr. Branch was to
365 take the same amount of bonds and stock and at the same price as Mr. Stuart. I have heard Mr. Branch incidentally refer to the stock and bonds that he held, and understood him to speak of what was issued at that time. My knowledge of the transaction generally was derived from Governor Mathews, and the conversations may be regarded as official and as being a communication to me from him as the president.

17th question. Did you have any conversation with Mr. J. P. Branch the day you were in Richmond (April 28th or 29th, 1882) in regard to this stock and bonds, or hear any conversation between him and Gov. Mathews or Mr. Stuart, or either of them, in regard thereto?

Answer. I saw Mr. Branch that day, but only for a moment, on the street. The only reference he made to the bonds at that time was to ask me whether we would have them ready for delivery by a certain hour. Afterwards at this place (the Greenbrier White S. Springs) I heard Mr. Branch refer to the stocks and bonds of the company that he held.

18th question. Please look at the certificate No. 21, in the name of John P. Branch, and state whether you observe that any part of the name "Branch" has been scratched or mutilated in any way?

Answer. The letters "ch" at the end of the word "Branch" have been scratched, as if with the intention of erasing the name.

Cross-examined by Major STRINGFELLOW, counsel for Merchants' Nat'l B'k and Jno. W. Kerr:

1st question. Please examine again the memorandum on stub No. 21 and that on the back of certificate No. 21, and say whether you are certain that they are not in the handwiting of Gov. Mathews.

Answer. I am not willing to swear that they are or are not, but from my knowledge of Gov. Mathews' writing I do not think
366 the writing or memorandum on the foot of stub No. 21 nor the writing on stub 23 are in his handwriting, but the endorsement on the back of the certificate No. 21 looks very much more like his writing.

2nd question. Who delivered to John P. Branch the stock and bonds about which you have been examined?

Answer. As to that, I only know that I left them in Gov. Mathews' possession. I did not deliver them, and I know that afterwards Mr. Branch paid for the bonds and stock to the extent of $20,000 as a

payment on the stocks and bonds which I understood he was to take.

3rd question. Did Mr. Branch give you any receipt for the stocks and bonds referred to?

Answer. He did not, as I did not deliver them.

4th question. Did you not write a receipt for him to sign by direction of Gov. Mathews?

Answer. I have no recollection of doing it, though I may have done so.

5th question. I presume, of course, your knowledge of what Gov. Mathews told you was the contract with Branch was more accurate on April 29th, 1882, than it is now, was it not?

Answer. I presume it would be.

By consent of the counsel present, the cause is adjourned to August 18th, 1886.

WM. J. LEAKE, *Com'r.*

367 WHITE SULPHUR SPRINGS, WEST VA.,
August 18th, 1886.

Met pursuant to adjournment.

Present: Same parties and counsel as on yesterday.

JOHN C. WOOD, the witness under cross-examination on yesterday, again took the stand, and Major Stringfellow resumed the X examination:

6th question. Please look at and read the paper now shown you, a copy whereof marked "J. W. K. No. 1" has already been filed with the deposition of Wm. A. Stuart, and state when and where and by whom it was written and all you may remember about it.

Answer. I wrote that paper in Governor Mathews' room in the Exchange hotel in Richmond on the day it is dated. I presume I wrote it and left it with Gov. Mathews. I wrote it at his dictation.

7th question. Amongst the bonds enumerated in that paper are included the bonds numbered from 201 to 300, inclusive, and it has been proven that the bonds numbered 251 to 300, inclusive, are in the hand of A. F. Mathews. Please state, if you know, how those bonds came again into the possession of the White S. Springs Co., if they were ever, in fact, delivered to John P. Branch.

Answer. I do not know.

8th question. State Governor Mathews' habit in regard to filing amongst the papers of the company letters which were addressed to him personally. Was he careful about such matters?

Answer. I don't think the governor ever filed with me letters addressed to him personally. He may have done so, but it was not his habit.

368 9th question. Please look at two letters now shown you, one dated Sept. 11, 1882, and one Sept. 16th, 1882, copies whereof have already been filed marked "J. W. K. Nos. 2 and 3," respectively, with the deposition of Wm. A. Stuart, taken before the present com'r, and state in whose handwriting they are and under what circumstances they were written.

Answer. These letters were written by me. I do not know anything about the circumstances beyond what the letters explain.

10th question. Please state, if you remember, whether Geo. L. Peyton, Wm. A. Stuart, & H. M. Mathews were not frequently together at the Greenbrier White Sulphur Springs during the summer and early fall of 1882.

Answer. Col. Peyton and Mr. Mathews were here during nearly the whole of that season, and Mr. Stuart was here during some part of the time, but not long.

11th question. Please state whether or not, during the season referred to above, Gov. Mathews received any bonds of the company; and, if so, what he did with them.

Answer. The governor handed me a bundle of bonds some time during the season and I placed them in the safe, and I think the whole bundle was afterwards delivered to Alex. F. Mathews. I am not certain that all of them were delivered to him, but I know that some of them were.

The witness desires to make following as an addition to his answer to 10th X question:

Addition to answer to 10th X question. Mr. Mathews and Col. Peyton at that time were at loggerheads, though previously they had been very intimate. I did not see them together, but I was employed busily in the office.

12th question. What were the personal and business relations of these three gentlemen in April, 1882?

369 Answer. I supposed them to be very intimate personally and in business matters.

And further this deponent saith not.

(Signed) JNO. C. WOOD.

By consent, the further hearing of this cause is adjourned until August 19th, 1886, at same place.

WHITE S. SPRINGS, *August 19th*, 1886.

Met pursuant to adjournment.

Present: Wm. A. Stuart.

Examination of WM. A. STUART resumed:

1st question by com'r. Have you any further statement or addition to make to your testimony?

Answer. Not at present. I will now sign my deposition, if agreeable to the com'r, reserving the right to have my deposition reopened on Sept. 1 prox., in Richmond, if my counsel shall so advice me.

(Signed) WM. A. STUART.

The further hearing of this cause is adjourned until this evening.

WM. J. LEAKE, *Com'r.*

W. S. SPRINGS, GREENBRIER CO., WEST VA., *Aug.* 19, 1886.

Met pursuant to adjournment.

Present: None of the parties previously present; George Grant in person.

By and pursuant to notice, the case was continued until August 20th, 1886.

W. J. LEAKE, *Com'r.*

W. S. SPRINGS, *August 20th*, 1886.

Met pursuant to adjournment.

The case is adjourned until to-morrow morning.

WM. J. LEAKE, *Com'r.*

370 W. S. SPRINGS, *August 21st*, 1886.

Met pursuant to adjournment.

The cause is now adjourned to my office, in Richmond, Va., on August 23rd, 1886, and then to be adjourned by request of all parties to the 1st Sept., prox.

WM. J. LEAKE, *Com'r.*

RICHMOND, *August 23rd*, 1886.

The cause is adjourned to Sept. 1st, 1886, at ten a. m., at the office of the com'r.

WM. J. LEAKE, *Com'r.*

RICHMOND, VA., *September 1st*, 1886.

In the Circuit Court of the United States for the District of West Virginia.

STUART, Who Sues, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS Co. *et als.*

and

WM. KNABE & Co., Who Sue, &c.,
vs.
THE SAME.

Before Special Com'r W. J. Leake.

Met pursuant to last adjournment.

Present: Wm. A. Stuart in person; H. H. Marshall and Tazewell Ellett, for the complainants in the second suit.

Owing to the absence of the witnesses the case is continued to the 2nd day of September, 1886, at ten o'clock.

WM. J. LEAKE, *Com'r.*

371 COM'R'S OFFICE, RICHMOND, VA., *Sept. 2nd*, 1886.

Met pursuant to adjournment.

Present: Wm. A. Stuart in person; H. H. Marshall & Tazewell Ellett, counsel for the complainants in 2nd suit; Geo. L. Peyton in person; Chas. S. Stringfellow, for Merchants' National bank, and Jno. W. Kerr.

GEORGE L. PEYTON, a witness of lawful age, introduced by the

complainants in the second suit, being duly sworn, deposes and says as follows:

1st question by Judge Marshall. Your deposition was taken in the case of "Wm. A. Stuart and others *vs.* Greenbrier White Sulphur Springs Co, &c.," pending in the circuit court of the United States for the district of West Virginia (the 1st suit), to be read, not only in that case, but also in the case of "Hodges Bros. and *als. vs.* Same Company and others," pending in the United States district court for the district of West Virginia, at Charleston, West Va., and that deposition is now shown you, being your deposition given before Com'r D. C. Gallaher. If you have not already done so to-day, please read that deposition, and state whether you now reiterate as true your evidence set forth therein.

Answer. I have just read that deposition, and I adopt it now, and I reiterate the facts therein set forth.

2nd question. You are shown, on pages 23, 24, and 25 of Com'r Gallaher's second report in the first of these suits, a recapitulation of debts against the Greenbrier White Sulphur Springs Company, amounting to, in the aggregate, $123,024.46 (not including the Grant Peterkin debt, of which I make no enquiry). Please
372 state whether this list of debts is correct, and whether the amounts of the several claims are justly due from the said company to the parties, respectively.

Answer. At the end of my connection with the company, in November, 1882, I think the amounts of the claims of these parties were justly due; and I know of no change in the status of these claims since.

And further deponent saith not.

(Signed) GEO. L. PEYTON.

JOHN W. KERR examined:

JOHN W. KERR, a witness of lawful age, called and examined by the complainants in the second cause, being duly sworn, deposes and says as follows:

1st question by Judge Marshall. Heretofore, in the case of "Stuart and others *vs.* G. W. S. Spr's Co. and others," you gave your deposition before Com'r Gallaher, in which you stated that you owned (100) one hundred shares of the stock of the Greenbrier White Sulphur Springs Company. Please state how you came to purchase said stock, and when you purchased it.

Answer. I purchased it in April, 1882. I bought it to make money.

2nd question. At whose instance did you buy it?

Answer. I did it at the suggestion of Mr. John P. Branch, who wanted to make me some money, I having none myself.

3rd question. Did you examine into the affairs of the Greenbrier White Sulphur Springs Company? Did you examine into the value of the property of said company, and of the liens upon that property, and its pecuniary condition as to debts due from it, before you purchased said stock?

Answer. I did not, any more than I would examine into the debts, &c., due by any other corporation in which I wanted to buy the stock, or on which it was suggested to me to buy.

373 4th question. Had it been suggested to you to buy and have you bought stock in other corporations; if so, what?

Answer. I have made many a speculation in New York on stocks.

5th question. When?

Answer. Seven or eight years ago, when I was living in New York; not since I have been in Richmond, except this. When I left New York I came to Richmond and went into Thos. Branch & Co.'s office for a short time; then became a conductor on the Richmond and Petersburg R. R. for about three or four years, and then went into Thos. Branch & Co.'s office for a short time—a few months—and then, about three years ago, I went into the Merchants' National bank at book-keeper, and have been there ever since.

6th question. You state that you have made many a speculation in New York in stocks. Did you ever buy any stock in New York without paying for the stock or putting up a margin?

Answer. I never did.

7th question. When you bought the 100 shares of stock in the Greenbrier White Sulphur Springs Company, did you pay anything for it in cash, and did you give any security for the purchase-money, except the stock itself?

Answer. I did not pay anything in cash. I gave the stock and bonds both, together with my note.

8th question. You have stated in your previous deposition, in answer to the 3rd question propounded to you therein, these words: "I suppose it was transferred like any other stock would be. They had my note for it, with the scrip as collateral. I thought it was a good thing and bought it." You said also in that deposition,

374 in answer to the 2nd question, these words: "I own one hundred shares of said stock. In 1882—latter part of April—I bought it from Thos. Branch & Co., at par, here in Richmond, Va., at their office." What would the said 100 shares of stock amount to at par?

Answer. Ten thousand dollars.

9th question. You state now that you gave "the stock and bonds both, together with my note." What do you mean by that?

Answer. I mean this: that I bought $20,000 of the bonds and 100 shares of the stock, and gave my note for it. In the former examination nothing was said about any bonds, nor were any amounts of money mentioned.

10th question. Was there anything said about any "bonds" during the taking of this deposition until you mentioned them in answer to the 7th question?

Answer. I don't recollect whether there was or not.

11th question. Then please read the deposition—the whole of it—from the beginning to the 7th question and answer thereto, inclusive, and then state whether you find any reference whatever to any bonds until you made it in the answer to the 7th question.

Answer. (The witness then read over the deposition and proceeds to answer.) No.

12th question. Was the purchase of the stock directly connected with the bonds you refer to?

Answer. I bought them both together.

13th question. Did you give separate notes for them?

Answer. It was but one transaction, and I gave but one note for them.

375 14th question by same. How long had the note to run?

Answer. It was a demand note.

15th question. Have you ever paid any part of it?

Answer. I have not.

16th question. Did you ever expect to pay said note or any part of it?

Answer. I did.

17th question. Did you have any means wherewith to pay it, except the said stock and bonds?

Answer. I expected to pay the note by the sale of the bonds and stock when there was a profit in it. I had no means to pay it.

18th question. When you bought said stock and bonds did you know that such stock and bonds had been sold in the market and at what prices they had sold, or did you enquire whether they had been sold in the market and at what price?

Answer. I did not know what the stock was worth, nor did I enquire. I bought the bonds and stock both at the suggestion of a person in whose judgment I had confidence.

19th question. When you gave your previous deposition you did not mention anything whatever of having purchased any bonds. You now say you purchased the bonds and stock both at the same time, as one transaction, and gave your one note for the purchase of both. Please state why you omitted then to mention the bonds which you now state was a material part of the transaction.

Answer. Because I was only asked if I owned any shares of the White Sulphur Spr's stock.

376 20th question. Did you take those bonds into your possession when you purchased them?

Answer. I saw the bonds and the scrip, and they were both given as collateral for my note of $20,000.

21st question. Did you execute to them any paper to that effect?

Answer. I gave them up the bonds and a power of attorney for the scrip.

22nd question. Was the power of attorney written on the back of the scrip?

Answer. Yes.

23rd question. Did you give any writing about the bonds?

Answer. No writing about the bonds, except as embraced on the face of the collateral note.

24th question. Who has that note?

Answer. Thos. Branch & Co.

25th question. Have you seen it to-day?

Answer. I have seen it to-day.

26th question. When?

Answer. I saw it about ten or fifteen minutes ago, perhaps.

27th question. In this office—the com'r's office?

Answer. Yes.

28th question. What was the name of your firm in New York?

Answer. McLeish & Kerr.

377 29th question. What business did they conduct?

Answer. We were brokers and commission merchants.

30th question. Was that firm successful or did it fail?

Answer. We failed.

31st question. What is your relation to Mr. John P. Branch?

Answer. He is my brother-in-law, and a very good one, too.

32nd question. You have said that you bought the stock at the suggestion of Mr. John P. Branch, who wanted to make you some money, you having none yourself. Did Mr. Branch promise to save you harmless from loss if you bought it?

Answer. He did. He promised to save me from loss, feeling satisfied it was a good thing, and I was to have all the profits from it.

33rd question. Did you make this purchase from any other member of the firm of Thos. Branch & Co. except Mr. John P. Branch, or was any other member of the firm present when you made it?

Answer. I bought it through Mr. John P. Branch. I don't know whether any other member of the firm was present or not.

34th question. Whereabouts did you buy it, in the bank or in the office of Thos. Branch & Co.?

Answer. In the office of Thos. Branch & Co. the transaction was made.

35th question. Were you sent for from the bank into the office to make it, or were you only casually there?

Answer. Well, the transaction was really made the day beforehand. I went to the bank office the next day when sent for

378 and signed those papers.

36th question. Where were you when the transaction of the day before was had?

Answer. I can't recall the special spot or the hour.

37th question. Who was present at that time?

Answer. I remember nobody but Mr. Branch.

38th question. You have seen the note you gave this morning. Please state the date of it.

Answer. I don't remember the date.

39th question. Can you tell the month and year, if not the particular date?

Answer. It was the latter part of April, 1882.

40th question. Did you execute the note on the day it bears date?

Answer. I did; whatever day it was.

Cross-examined by Major STRINGFELLOW:

1st question. Did John P. Branch ever assist or manifest any desire to assist you in any other matter by lending you money, giving you advice, or procuring you employment; and, if yea, to any considerable extent?

Answer. Many and many a time.

2nd X question. Is it not a fact that for many years past John P. Branch has loaned many thousands of dollars to his own and his wife's connections without security, or certainly without such security as a business man would take in ordinary transactions?

Answer. He has. I answer for myself.

3rd X question. At the time of the transaction in question
379 was not John P. Branch a wealthy man, who had made most of his money by speculating in the purchase and sale of stocks and bonds and other securities?

Answer. I can't answer about the speculating. He was dealing in them and was considered to be a rich man.

4th X question. Would you not, at that time, knowing Jno. P. Branch's feelings towards you, have purchased any other stocks or bonds which he advised you to buy?

Answer. I would.

5th X question. You have said that you gave your note for $20,000 in payment for the stock and bonds about which you have been questioned. Please examine the paper now shown you, and state if it is the note to which you refer.

Answer. It is; and I file a copy of the said note with the commissioner to be marked "J. W. K. No. 10."

6th X question. You have said that the scrip for 100 shares of stock was shown to you and delivered by you as collateral for your note. Please examine the paper now shown you, and state if it is the scrip, and, if yea, file a copy of it with the com'r.

Answer. It is the said scrip, and I now file a copy of it to be marked "J. W. K. No. 11."

7th X question. Please state whether the signature to the power of attorney on the back of said scrip is your genuine signature, and whether the name "C. E. Redford," in whose presence the said power of attorney purports to have been signed, is the genuine signature of C. E. Redford, and what was said Redford's occupation at that time.

Answer. The signatures of Redford and myself are genuine. Redford was the book-keeper of Thos. Branch & Co. at that time.

380 8th question. Please produce before the com'r the bonds which you say you purchased along with the stock, and let him examine and take the numbers of the same.

Answer. I now produce them and request the com'r to examine and take their numbers.

Note by Com'r.

The witness here produced forty bonds of the Greenbrier White S. Springs Co., each for $500 and numbered 101 to 140, inclusive, all dated on April 15th, 1882, and having all of the coupons attached thereto, all payable to John P. Branch or bearer, and payable on the 15th April, 1912, and signed by H. M. Mathews, president, and Jno. C. Wood, secretary, of the Greenbrier W. S. Springs Co. The coupons are engraved and have name of Jno. C. Wood, secretary, lithographed thereon.

The said bonds when produced were wrapped in a piece of worn brown paper, upon which there is the following pencil endorsement:

"20,000 White S. S. bonds.
100 shrs. do. stock.
Ch'g'd to J. W. Kerr."

which writing is scarcely legible and has the appearance of being rubbed in handling.

W. J. LEAKE, *Com'r.*

9th X question. How did you get possession of the bonds, stock, and note which you have just exhibited to the commissioner?

Answer. I got them from Major Charles S. Stringfellow, who, in my presence this morning, got them from Thos. Branch & Co., for the purpose of proving them before this commissioner, and I have returned them to Major Stringfellow.

Re-examined by Judge MARSHALL:

381 Judge Marshall declines to re-examine the witness.
And further this deponent saith not.
(Signed) JNO. W. KERR.

It is here admitted by Wm. A. Stuart in person and by Judge H. H. Marshall, counsel for complainants in second suit and other unsecured creditors, that the writing on the face of the scrip (of which "Exhibit J. W. K. No. 11" is a copy) and the writing on the stubs Nos. 21 and 23 in the stock book and the endorsement across the back of the scrip No. 21 for 100 shares in name of John P. Branch, which is pinned in the said scrip book, is all in the handwriting of Henry M. Mathews, president of the defendant company, they having become satisfied of the fact so admitted by ascertaining from Col. Peyton and the statement of Mr. Jno. F. Glenn that Mr. Lafferty and Mr. Price were mistaken as to said writing.

WM. J. LEAKE.

By consent, the further hearing of the cause was adjourned to 4 o'clock p. m., at which hour the com'r again attended at his office.

Present: Wm. A. Stuart, Esq., in person; R. Taylor Scott, counsel for H. Grafton Dulaney.

WM. A. STUART recalled:

1st question by com'r. Is there any further fact or statement that you desire to make in order to throw light upon the matters involved in this cause; if so, please state it.

Answer. Perhaps I should make an explanation touching my vendor's lien in the interest of H. G. Dulaney, Jr. I owe the said Dulaney two hundred thousand dollars, bearing 6½ per cent. interest from 1st inst. To secure this loan I have transferred to him the bond due me as vendor by the Greenbrier White Sulphur
382 Springs Company September 1st, 1900, for $213,000. I have also transferred of my said vendor's lien to said Delaney other

bonds secured in my conveyance to the Greenbrier White Sulphur Springs Co. largely in excess of the accruing interest from now till the note due in 1900 matures. This arrangement with Mr. Dulaney took place several years ago—I think in 1881 or 1882. Other bonds held by me of the vendor's lien, except the one due 1 Sept., 1882, were made inferior in dignity to the bonds transferred — Mr. Dulaney by my making an endorsement on each bond assigning the same to —— —— and stipulating that the bonds assigned Mr. Dulaney should have priority over these so endorsed.

And further deponent saith not.

(Signed) W. A. STUART.

The further taking of evidence in this cause is adjourned to Sept. 4th, 1886, at eleven a. m.

WM. J. LEAKE, *Com'r.*

COM'R'S OFFICE, RICHMOND, VA., *Sept. 4th*, 1886.

Met pursuant to adjournment.

Present: Geo. L. Peyton in person; Major C. S. Stringfellow, counsel for John W. Kerr and Merchants' National Bank of Richmond; Judge H. H. Marshall, counsel for complainants in second cause.

F. R. SCOTT, a witness introduced by the Merchants' National Bank of Richmond and for Thos. Branch & Co. in the suit of "Stuart and *als. vs.* Greenbrier White S. Springs Co. and others," being duly sworn, deposes and says as follows:

1st question by Major Stringfellow. Please examine the paper now shown you, a copy whereof marked "J. W. K. No. 1" has already been filed with the com'r with the deposition of
383 Wm. A. Stuart, and state all you know about it.

Answer. The paper was handed to me by Gov. H. M. Mathews, in my office, in the absence of Mr. John P. Branch, for signature. I told him I would hand it to Mr. Branch as soon as he came in. It laid on my desk for some little time—how long I cannot say—and I handed it to Mr. Branch.

2nd question by same. Please examine papers now shown you, marked "F. R. S. No. 1," consisting of four sheets, and state whether they are or are not true copies of letters, telegrams, &c., taken from the books of Thomas Branch & Co.; and, if yea, please write the name (of) the person in whose handwriting each one appears to be on the papers themselves, so as to designate the writer of each.

Answer. They are all correct copies of letters and accounts taken from the letter-press copy books of Thomas Branch & Co., and I have written on each the name of person by whom they were respect*ful*ly signed.

3rd question by same. By the account, which is on the second sheet of said Exhibit "F. R. S. No. 1," dated Richmond, April 29, 1882, there appears that there is a balance of $12,858 92 due to the (Greenbrier) White Sulphur Springs Co. Please state whether the

said balance was ever paid to said company; and, if so, when and how.

Answer. Governor H. M. Mathews, president of said company, drew a draft on Thomas Branch & Co., dated May 1, 1882, for said balance. The said draft was presented by the First National Bank of Richmond on May 3rd, 1882, and it was on that day paid by Thomas Branch & Co.'s check on the Merchants' National bank. The original draft and original check I now exhibit to the com'rs, but retain same, to be produced whenever required.

384 4th question by same. Please state who composed the firm of Thomas Branch & Co. during the year 1882.

Answer. J. P. Branch, F. R. Scott, and Geo. A. Cunningham.

5th question by same. Please state whether the defendant company is indebted to Thomas Branch & Co.; and, if yea, in what amount, and what security, if any, said firm holds for its debts.

Answer. The Greenbrier White Sulphur Springs Company is indebted to Thomas Branch & Co. as follows:

1st. For note of said company for $3,700, dated June 20, 1882, at four months, to order of Geo. P. Stacy, and endorsed by him, protested Oct. 23, 1882.

2nd. For note of same for $1,000, dated 21 August, 1882, at 60 days, to order of Geo. P. Stacy, and endorsed by him, and protested Oct. 23, 1882. For the above we hold no security, except Stacy's endorsement.

3rd. A note of same company for $10,000, dated August 1, 1882, at four months, with a credit on it of $487.85.

4th. A note of same company for $10,000, dated Sept. 1st, 1882, at four months, protested for non-payment January 4th, 1882.

All four of said notes are signed by Henry M. Mathews, president of said Co. All four of these notes I now produce, and file copies of same as Exhibits "F. R. S. Nos. 2 to 5," inclusive.

For the third note Thos. Branch & Co. holds 30 bonds of the def't company for $500, dated April 15, 1882, and secured by the trust deed in these proceedings mentioned to Gordon & Carrington, trustees. These bonds are numbered from No. 201 to 230, inclusive. For the 4th note Thos. Branch & Co. hold as collateral security 30 bonds of the def't company for $500 each, dated as aforesaid, and secured by same deed. These are numbered from 141 to 170,

385 inclusive. I now produce said bonds to the com'r for his inspection. All of the coupons are attached to the said bonds.

6th question. What is your relation to the Merchants' National Bank of Richmond?

Answer. I am its vice-president.

7th question. Is the defendant company indebted to said bank; and, if so, to what amount; and what security has it for said debt?

Answer. The defendant company is indebted to said Merchants' National bank in the sum of $10,000, as evidenced by a note of said company, dated 29th of April, 1882, for $10,000 at five months after date, and now exhibited to the com'r, signed by Henry M. Mathews, president. A copy of said note is filed as Exhibit "F. R. S. No. 6." This note is secured on its face by 30 bonds of $500 each, No-. 171

to 200, inclusive, of said company, dated April 15, 1882, and secured by the deed of trust to Gordon & Carrington, trustees, and by a further deposit of 20 of same bonds of $500 each, Nos. 231 to 250, inclusive, all of which have all the coupons attached, and which are held as collateral for said note. I now produce these bonds for the inspection of the com'r.

Adjournment.

The further taking of these depositions is adjourned to Sept. 22, 1886.

WM. J. LEAKE, *Com'r.*

COM'R'S OFFICE, *Sept. 22nd*, 1886.

Met pursuant to adjournment, and adjourned to Dec. 1st, 1886.

WM. J. LEAKE, *Com'r.*

386 COM'R'S OFFICE, RICHMOND, VA., *Dec.* 1, 1886.

Met pursuant to adjournment.

Present: Wm. A. Stuart in person, Geo. L. Peyton in person; Tazewell Ellett, counsel for the complainants in second suit; Charles S. Stringfellow, counsel for Merchants' National bank and Thos. Branch & Co.

FREDERICK R. SCOTT, the witness under examination, again took the stand, and his examination-in-chief by Major STRINGFELLOW was resumed:

8th question by Major Stringfellow. Was the note which you say the Merchants' National Bank of Richmond holds discounted by the board of directors at one of their meetings or discounted by order of Mr. Branch, the president, in the interim between the meeting of the board; and for whom was the note discounted?

Answer. The note was not discounted by the board, but was discounted in the interim between the meetings of the board, I presume by Mr. Branch, the president, and for account of Thomas Branch & Co.

And further this deponent saith not.

(Signed) FRED. R. SCOTT.

COM'R'S OFFICE, RICHMOND, VA., *December 1st*, 1886.

In United States Circuit Court for the Dist. of West Va.

STUART
vs.
GREENBRIER W. S. SPR'S CO. and *als.*

and

WM. KNABE & CO., Who Sue, &c.,
vs.
SAME.

387 Met pursuant to adjournment.

Present: Wm. A. Stuart in person; Geo. L. Peyton in

person; Tazewell Ellett, of counsel for plaintiffs in second suit.

On the motion of Wm. A. Stuart he is recalled as a witness in his own behalf and thereupon he makes the following statement:

Additional Statement of Wm. A. Stuart.

In my deposition, given at the White Sulphur in August last; in answer to the 10th question by Judge Marshall I stated that the stockholders in 1880 had paid sixteen thousand dollars ($16,000) to the commissioners of sale as a part of the $50,000 of stock paid in. I was then, and until yesterday or the day before, under the impression that the purchase-money, bonds given me by the defendant company and set out in my deed to said company, represented the purchase-money due me after deducting the $16,000 aforesaid. I have, in the last day or two, been informed that upon a careful calculation it appears that this sum of $16,000 was not deducted before the execution of the bonds. If this be so the purchase-money due me is subject to the credit of said sum.

And further saith not.

(Signed) W. A. STUART.

Mr. Stuart *as* erroneous. See his deposition of Jan'y 13, 1887.
WM. J. LEAKE, *Com'r.*

Before the preceding statement was signed by Mr. Stuart, and upon hearing it read, Col. Tazewell Ellett, counsel for complainants in second suit, made the following exception to the said statement:

Exception: That the deed executed between Wm. A. Stuart and the defendant company, whereby he reserved his vendor's
388 lien, is the best evidence of the amount due by the company upon its purchase of the property and of payments made thereon to that date, and by said deed Stuart is estopped from now setting up the amount paid on account of the original purchase-money by the individuals who afterwards composed the Greenbrier W. S. S. Co. as a credit on said purchase-money, and he cannot explain away said deed by parol evidence. Said Stuart has also already proven the amount of principal of his vendor's lien to be $390,000, with interest, subject to some subsequent payments, and it has been already so reported by Com'r Gallaher.

Col. George L. Peyton, recalled by Col. Tazewell Ellett, counsel for complainants in second suit, deposes and says as follows:

1st question by Col. Ellett. Please state what amount was agreed to be paid George L. Peyton & Co. for the furniture bought of them and the circumstances under which it was bought.

Answer. The amount was $35,000. The circumstances under which Mr. Stuart purchased the furniture of Geo. L. Peyton & Co. were these: Mr. Stuart had bought the White Sulphur Springs property in the Gay suit and expected at an early day to have the sale confirmed to him, and Geo. L. Peyton & Co. had determined to put in an upset bid, and in order to satisfy Geo. L. Peyton & Co. Mr. Stuart

bought, individually, the furniture of Geo. L. Peyton & Co. for the sum of $35,000, but intended it for himself and associates, the parties who formed the G. White S. Spr's Company. It was clearly largely to Mr. Stuart's interest to do this so as to get George L. Peyton & Co. out of his way, as they were the only parties likely to oppose a confirmation of the sale, because he was getting his property out of litigation, and as he had three-fourths of it sold, if the sale was confirmed, to Camden, Mathews, and myself, and in addition to that he was making $51,000 out of debts secured to him by the deed of
1842 when no other creditor secured by the said deed in same
389 class participated.

2nd question by same. State the actual quality and condition of this furniture and what the same was intrinsically worth, in your estimation, when it was so sold.

Answer. The quality of the furniture was not good—the condition was very good, and if it could have been used in operating the springs it was worth more money than $35,000, or if it had been valued at the springs for the use of the springs I think it would have been worth more money; but to have sold it there, there would have been no market for that quality of furniture, and I doubt very much whether anything like that amount could have been realized for it, for there would have been no demand for so large an amount of furniture in that neighborhood. I doubt very much whether it would actually have sold for more than $15,000, if sold there for cash, for the reasons heretofore stated.

3rd question by same. Was not a large majority of the said furniture laid aside and never used?

Answer. That was so; but for this reason: The company had not increased its earning capacity and had bought a large quantity of new furniture and this old furniture had to be removed to make room for the new.

4th question by same. Would the G. White S. Springs Company, had its real estate been sold as a whole and its other assets realized upon, have been able to pay its debts at any time from the date of its organization to the time of the appointment of a receiver?

Answer. I doubt very much whether it could have been sold with all the assets for enough to pay out, unless the purchaser could have had the benefit of the credit of $200,000 for twenty years,
389½ according to terms with Mr. Stuart. I think that would have helped the matter very much, in bringing about more bidders for the property.

1st question by compl't Stuart. In answer to first question above, you say the price agreed to be paid Geo. L. Peyton & Co. for their furniture was $35,000. Are you not mistaken about that?

Answer. The agreement was for $35,000, except that to the extent of my interest in the concern of Geo. L. Peyton & Co. I agreed that the furniture should be sold at valuation, my interest being $\frac{9}{16}$ths, and I was of the opinion that the valuation at the springs would give me more than $35,000, or more than $\frac{9}{16}$ths of that for my interest. No valuation was ever made, however, and in a suit about the matter the court fixed the price at $35,000 for the whole. Before

the purchase from Geo. L. Peyton & Co. by Mr. Stuart, on Jan'y 30th, 1880, I had a written contract with Mr. Stuart, binding him to carry me as a stockholder and for the improvement in the property and for furnishing the property, whilst Mr. Stuart bought this property of George L. Peyton & Co. for himself and for me as one of his associates and for his other associates. This contract I refer to made my indebtedness or liability to Mr. Stuart and not to Geo. L. Peyton & Co., and by my written contract with him, of Nov. 4th, 1882, all my liability to him was settled.

Exception by Mr. Stuart.

The foregoing answer from the words "before the purchase from Geo. L. Peyton & Co.," &c., to the conclusion is excepted to by Stuart:

1. For irrelevancy and not being responsive to the question.

2. Because two written contracts are referred to and their contents stated without producing them, when the papers themselves afford the best evidence of their contents.

2nd question by compl't Stuart. You have thought proper
390 to introduce into your last answer questions of liability between W. A. Stuart and yourself, growing out of White Sulphur matters. Now please state whether you are not sued in two or more cases in the circuit court of Augusta county to settle these questions of liability between you and said Stuart, and do you or not rely upon the contracts to which your answer refers as your defense in those cases?

Exception: Col. Ellett, as counsel for complainants in second suit, excepts to this question as irrelevant to the questions involved in these suits.

Answer. (Memo.: At the instance of Mr. Stuart I now record the fact that at this point Col. Ellett suggested to the witness that, if he chose to, do so, he could decline to answer the above question.—W. J. L., com'r.)

(The WITNESS:) I decline to answer the question, as my counsel is not present.

3rd. Please repeat the first branch of the preceding question.

Excepted to by Col. Ellett for reasons stated in preceding exception, and because the cross-examination is being had upon questions in nowise alluded to in the direct examination.

Answer. I will state that I will file copies of the two said contracts between Mr. Stuart and myself, and I decline to answer further for the same reason stated above, because my counsel is not present.

4th question by compl't Stuart. Why did you bring in this outside matter in the absence of your counsel?

Answer. I do not know what prompted me to do it. I wanted to bring out the facts as they occurred between us, as shown by the contracts.

At this point the further examination of Col. Geo. L. Peyton was adjourned until to-morrow morning.

391

And thereupon Wm. A. Stuart was again called to the stand, at his own request, and made the following additional statement by Mr. Stuart:

I wish to say, in rebuttal to the deposition given by Mr. George L. Peyton this morning, that the said George L. Peyton has misstated or misinterpreted the contents of the two papers referred to in his answer to the 1st question propounded to him by me on this morning, and that the questions of liability between the complainant Wm. A. Stuart (myself) and the said George L. Peyton, growing out of the White Sulphur Springs matters, are being litigated in two or more suits pending in the circuit court of Augusta county, Virginia.

And further this deponent saith not.

(Signed) W. A. STUART.

Memo.: Col. Peyton here states that whether he has misstated or misinterpreted the contracts will appear by a reference to the contracts, which will speak for themselves, and copies of which he has stated in his deposition that he will file.—W. J. Leake, com'r.

By consent, the cause is adjourned to to-morrow morning at ten o'clock.

W. J. LEAKE, *Com'r.*

COM'R'S OFFICE, RICHMOND, VA., *December 2nd*, 1886.

Met pursuant to adjournment.

Present: Tazewell Ellett, counsel for complainants in second suit; George L. Peyton in person.

GEORGE L. PEYTON'S examination by Col. ELLETT was resumed:

5th quest. by Col. Ellett. Look at the paper now shown you, and to be filed as an exhibit with your deposition, marked Exhibit "Boudar No. 1," and at the entries on the 2nd page thereof, marked "Edward Bailey, J. N. Camden, Wm. P. Thompson, H. H. Marshall, and P. McCarty," and state whether those are debts actually due for board to the Greenbrier White Sulphur Springs Company for year 1880, and first state what the said paper purports to be.

392

Answer. It purports to be a "trial balance," "statement," and "balance-sheet" of the business of the Greenbrier White Sulphur Springs Company (or those doing business under that name) for the year ending Dec. 31, 1880, and I understand that this paper was made out by H. B. Boudar, an expert book-keeper employed by the present com'r for that purpose. The items entered on page 2nd of said paper in names of "Edward Bailey, J. N. Camden, W. P. Thompson, H. H. Marshall, and P. McCarty" do not represent any actual debts due to the company for the year 1880 or any other time. Edward Bailey was an employee and the other parties boarded at the springs the year 1880, and while the book-keeper entered these

charges, as shown by said exhibit, against the several parties, and they thus appear as assets, it was understood at the time that none of these parties were to pay board, as they were all rendering services to the company deemed worth as much to the company as their board. I suppose the book-keeper was not informed of the arrangement, and when these parties on arrival registered as usual with other arrivals they were charged erroneously with board as if they were paying visitors. The same facts apply to the items on page 1 of said exhibit in reference to Wm. A. Stuart for $717.19; H. M. Mathews, $931.27, and A. F. Mathews, $96.75, and W. R. Johnson, $14.50, and J. C. Neilson, $500. None of these parties owed anything to the springs for board and board was improperly charged against them.

6th question by same. Look at memorandum No. 3, page 2 of said exhibit, and explain the $11,000 entry therein credited to "board account" and debited to "improvement account."

393 Answer. I was the superintendent of the springs during the years 1880, 1881, and 1882, and I have no doubt this entry of $11,000 to the credit of "board account" was made by my direction. The hands employed in repairing the springs property were fed very cheaply. It was my judgment that we had the right to charge a profit on boarding them, and one of my partners concurred with me in that view. I think the entry of $11,000 was 100 per cent. of profit, or, in other words, that it cost actually one-half that sum, or $5,500, to board the hands. A considerable part of this was for hands employed in cleaning up the cottages and getting the grounds in order for the ensuing season, but I suppose that amount would cover all the board for hands for that year.

7th question by same. Look at memorandum No. 4, page 3 of said exhibit, in reference to furniture, tools, and implements and hardware, and state whether or not the sum of $46,150.69 represents the cost price of these articles owned by said company or partnership at the close of the year 1880 or the value of those things at that time.

Answer. It represents the cost price of all such articles, including freights, exclusive of the furniture purchased from Geo. L. Peyton & Co.

8th question by same. Ought not the said items in said account to have some credit or reduction for depreciation from use, breakage, wear and tear, stealage, &c., which must have occurred during the season and prior to the end of the year? If so, state what sum or percentage should be so credited or deducted from said amounts in order to represent the true value of said articles at the end of said year.

Answer. I think so. I think the credit or deduction should be from ten to fifteen per cent. From my experience as a hotel keeper

394 I think that there would be at least twelve per cent. annual depreciation in the value of a hotel stock of such articles from the causes mentioned, and I think the stock in question depreciated that year from all of the above causes, at least to that extent.

9th question by same. Look at memorandum No. 6, p. 3 of said

exhibit, in reference to "fuel," representing that $293.49 — of fuel was on hand on Oct. 31, 1880, &c. State whether any of said fuel was on hand at the close of the year 1880; and, if so, how much.

Answer. I think that one-half of that amount must have been consumed by the end of the year. I mean about one-half, as there was a larger force than usual for that period of the year there, and a good deal of fuel must have been consumed in that time.

10th question by same. I see from memorandum No. 7, p. 3 of said exhibit, that "livery account" stands as an asset to the amount of $2,222.78, including feed. Please state what amount, if any, of said feed was consumed said year between Oct. 31, 1880, and the end of the year.

Answer. I estimate it to be about $250 worth.

11th question by same. What was your salary as superintendent from May 1, 1880, to May 1, 1881; and what part, if any, was due and unpaid on Dec. 31, 1880; and was it subsequently paid?

Answer. My salary was $3,000. On December 31, 1880, nothing had been paid, and, consequently, eight months' salary, amounting to $2,000, was due Dec. 31, 1880. This was subsequently paid; the books will show when, I presume. It is true that the books show that I had drawn out various sums up to Dec. 31, 1880, and thus showing that I owed the company $1,207.47 on Dec. 31, 1880, but no credit had been given me for my salary to that date. Had I been credited with the salary to that date, to wit, $2,000.00, and from that there had been deducted $1,207.47, the books would have shown $792.53 as actually due me on this account. My salary was entered to my credit during the ensuing year.

395

12th question by same. What was the depreciation in value of the Geo. L. Peyton & Co. furniture—purchased at $35,000, as stated by you—from the time of its purchase to close of year 1880? I mean from the time of sale by Geo. L. Peyton & Co. to Stuart, for himself and associates.

Answer. It must have been twenty per cent. (20 %). Much of it was stored away in the basement of the hotel and in very damp rooms.

13th question by same. Will you state whether there were any outstanding debts or liabilities of the company or partnership called the Greenbrier White Sulphur Springs Company on the 31st December, 1880, which do not appear up to that date on the books of said company? If so, state what such debts and liabilities were, and whether they were subsequently paid or not.

Answer. I will, so far as I can now recall them or remember.

1st. There was my salary, about which I have already answered.

2nd. The taxes for year 1880, about which I cannot speak definitely. They had not been —.

3rd. Possibly a part of the insurance. I do not know certainly about this.

5th. There was a debt due Col. W. W. Gordon as counsel for the company—$500—for the year 1880, and a like sum to Major J. H

Carrington for like services. These debts are still outstanding. I think — are proven in the suit at Charleston.

These are all I now remember.

14th question by same. How was it that so large a showing of profits was originally shown by the balance-sheet prepared for year 1880?

Answer. The company expected to have stock upon the
396 market, and, in order to make it as inviting as possible to the capitalists to invest, it was necessary for the balance-sheet to show as good a showing as possible. I wish to state, however, that if my deposition shows or causes any change in the balance-sheet made by Mr. Morrison, these matters were discussed with him, and I considered him a competent and accomplished book-keeper.

(Note by com'r: Just as the preceding question was put, Judge Marshall appeared.)

15th question by same. Would the real estate of the G. W. S. Springs Co. in your opinion have sold for the sum of $390,000, the amount of the vendor's lien on Dec. 31, 1880?

Answer. No, I don't think it would.

16th question by same. You had been living there how long at that time, and did you have a good idea of the value of the property?

Answer. I had been managing the property from the year 1867, and had a very good idea of its value. There would have been but little competition for the property, and I do not think it could have been sold for that sum.

17th question by same. Was there ever a definite statement of the financial condition of the company reported to the stated meetings of the board by the president as required by by-law No. 8?

Answer. They were frequently discussed, but nothing definite was ever produced that I ever heard of.

18th question by same. Did the treasurer give bond as required by the by-laws?

Answer. Never, to my knowledge.

19th question by same. Was the resolution of the board
397 on page 14 of its minutes, limiting the issue of notes of the company to $50,000, and prescribing in what manner they should be drawn, as amended by resolution on page 17, increasing said limit to $100,000, ever subsequently altered or abrogated by the board?

Answer. Never, that I know of, and the minutes do not show that the board ever did.

20th question by Judge Marshall. It has been stated by Mr. Stuart (see page 23 of his deposition before Com'r Gallaher at Richmond, Va.) that he and others regarded themselves as justified in adding to the $75 or $80,000 of the capital stock that had been paid in early in the year 1880 the profits of the season of 1880, which you, the superintendent, reported as something over $56,000. Please state how you came to make such a report, if you did so.

Answer. I can recall that the book-keeper presented the balance-sheet, to the company, and it was discussed. I reported nothing

except what the book-keeper reported to me. I never claimed to be a book-keeper myself, and have no pretensions of that sort.

21st question by same. You have already stated, in answer to Mr. Ellett's 14th question, to-day, that the company expected to have stock upon the market, and in order to make it as inviting as possible to capitalists it was necessary that the balance-sheet should make as good a showing as possible, or words to that effect. When you say the company expected, please state what members of the company you referred to; and please state whether Mr. Morrison, the book-keeper, was informed of the desire of the company, and was he instructed so to make *the* his entries upon the books so as to make the good showing so much desired. State also whether he complied with those instructions and made his entries and finally the balance-sheet accordingly.

Answer. I referred to all of the members of the company,
398 Stuart, Mathews, Camden, and myself; but we never intended to have any improper entries made. Mr. Morrison was informed by me of the importance or necessity of having the balance-sheet to show a good profit, and I very distinctly remember to have instructed him as to the item of $11,000 upon "board account" and may have done so on other points that I don't remember. I think Mr. Morrison made the entries and balance-sheet accordingly.

22nd question by same. Was Stuart, Camden, and Mathews, or either of them, cognizant of the fact that you have stated in regard to the item of $11,000 just mentioned?

Answer. Gov. Mathews, who was living at the springs, I know, was, and when the balance-sheet was presented that item was discussed, Mr. Morrison being present, and the balance-sheet was left as it now stands.

23rd question by same. Do you know whether the necessity of making a good showing by the balance-sheet was discussed by you gentlemen before Mr. Morrison?

Answer. I do not know that it ever was.

And further this deponent saith not.

(Signed) GEO. L. PEYTON.

The cause was then adjourned until Dec. 3rd, 1886.

WM. J. LEAKE, *Special Com'r.*

COM'R'S OFFICE, RICHMOND, VA., *Dec. 3rd*, 1886.

Met pursuant to adjournment.

Present: Tazewell Ellett, Esq., counsel for complainants in second suit.

No witness appearing, the cause was adjourned to December 6th, 1886.

WM. J. LEAKE, *Com'r.*

399 COM'R'S OFFICE, *Dec. 6th*, 1886.

Met pursuant to adjournment.

Present: Col. Tazewell Ellett, counsel as above stated.

H. B. Boudar, a witness summoned for complainants in second

suit, not appearing, the cause is adjourned and continued until the 10th December, 1886, at ten a. m., at my office, Richmond, Va.

WM. J. LEAKE, *Special Com'r.*

COM'RS OFFICE, RICHMOND, VA., *December 10th*, 1886.

Met pursuant to adjournment.

Present: Col. Tazewell Ellett, counsel for complainants in second suit.

H. B. BOUDAR, a witness of lawful age, being first duly sworn, deposes and says as follows:

1st question by Col. Ellett. What is your age, residence, and occupation?

Answer. Henry B. Boudar; aged forty-nine; I reside in Richmond, Va., and I am a clerk and book-keeper by occupation.

2nd question by same. Have you made any examination of the books of the Greenbrier White Sulphur Springs Company now in the possession of Special Com'r Leake, and, if you have, state when and where and why you made such examination and the extent of such examination.

Answer. I have within the last two months made an examination of the books of said company, by the request of Special Com'r Leake, in his office in this city, for the purpose of making off a correct balance-sheet of the business of said company for the year ending on the 31st December, 1880. I examined the ledger, journal, and cash books (two of the latter) as to all transactions during the year 1880, and the same books as to all subsequent entries which threw light upon or explained the transactions of the said
400 company for the year 1880. I found that no new set of books were opened for year 1881 or subsequent years, but the business transactions were continued in the same set of books originally opened for year 1880.

3rd question by same. Please state whether, as a result of said examination, you made any balance-sheet or other statement. If yea, will you please produce it and file such statement before the com'r?

Answer. I did make a statement showing the results of such examination. The said statement has already been filed with the com'r and made an exhibit, marked "Boudar No. 1," with deposition of Geo. L. Peyton, page 71, question 5, of these depositions. I identify said paper, which is in my handwriting, consisting of six pages of written matter, and which I will further identify by signing my name at the foot of the last page of it.

4th question by same. Is the said statement, "Boudar No. 1," a correct statement from the books of said company of the condition of its business at the close of the year 1880?

Answer. It is, qualified by the various suggestions made in the memoranda contained in said statement.

5th question by same. Will you please examine the deposition of Col. Geo. L. Peyton, sup't of G. W. S. Springs Co. for year 1880, taken before Com'r Leake on the 1st day of December, 1886, and

now shown, and make a statement of the condition of the said Greenbrier W. S. Springs Company on Dec. 31, 1880, from the same books, making such corrections and changes as should be made therein, if his testimony is taken to be correct upon the matters therein set forth?

Answer. I will, and will file the same before the com'r as Exhibit "Boudar No. 2," and I will append to it any suggestions or
401 remarks that I think it proper to make, and will then answer any questions asked in order to explain it, but I will try and make it explain itself.

In order to give the witness time to make the statement, the case is now adjourned to Dec. 14th, 1886.

W. J. LEAKE, *Special Com'r.*

COM'R'S OFFICE, RICHMOND, VA., *December 14th*, 1886.

Met pursuant to adjournment.

Present: Tazewell Ellett, Esq.

The witness not being present, the causes are adjourned and continued until the 18th day of Dec., 1886.

WM. J. LEAKE, *Com'r.*

RICHMOND, *Dec. 18th*, 1886.

Met pursuant to adjournment.

Present: Tazewell Ellett, Esq., counsel for complainants in second suit.

H. B. BOUDAR, the witness, again took the stand and his examination was resumed:

6th question by Col. Ellett. Have you completed the statement which you said you would make in your answer to the 5th question?

Answer. I have, and now file the same, to be marked Exhibit "Boudar No. 2."

7th question by same. Examine the books of the defendant company at some date in the year 1881, and also in the year 1882, and state what amount of "bills payable" were outstanding and unpaid at said dates.

Answer. On Dec. 1, 1881, I found that there were outstanding notes of the company amounting to $114,294.39, and on
402 April 15, 1882, there were notes outstanding to the amount of $172,046,18. This latter amount includes notes to Peterkin for the purchase of real estate, amounting to $20,214.29.

And further this deponent saith not.

(Signed) H. B. BOUDAR.

By consent of parties present these causes are adjourned to Jan'y 13th, 1887.

WM. J. LEAKE, *Com'r.*

COM'R'S OFFICE, RICHMOND, VA., *Jan'y 13th*, 1887.

STUART
v.
GREENBRIER WHITE S. SPR'S CO. and *als.*

and

WM. KNABE & CO., Who Sue, &c.,
vs.
SAME.

Met pursuant to adjournments.

Present: Wm. A. Stuart, in person; Col. Tazewell Ellett, for the complainants in second suit and other creditors.

Wm. A. Stuart, Esq., produced and filed with the com'r two papers herewith returned:

1st. A long statement made by J. W. Mathews and marked Exhibit "J. W. M. No. 1."

2nd. A letter from J. W. Mathews to said Stuart, dated "Lewisburg, W. Va., Jan'y 6th, 1887," and herewith filed, marked "J. W. M. No. 2."

And to avoid the necessity of sending to Lewisburg for the said J. W. Mathews and save the expense incident thereto, it is
403 agreed by Col. Ellett, as counsel for the parties represented by him, that said letter and statement may be treated and considered as the deposition of said Mathews, but subject to the following exception, to be considered as taken in due time on the examination of said witness:

Exception: Col. Ellett, as counsel for said complainants and creditors, excepts to said letter and statement so treated as a deposition so far as it undertakes to vary or alter the written contract and agreement and deed between said Stuart and his associates and the defendant company.

Wm. A. Stuart then asked to be recalled as a witness in his own behalf to make the following additional statement:

Statement of Wm. A. Stuart.

On December 1st, 1886, I made a statement which I wish to explain and correct. I never had a doubt but that the installments set forth in my deed to the Greenbrier White Sulphur Springs Company represented principal and interest due or to become due to me as purchase-money of the White Sulphur Springs, but being assured that there was a mistake therein in not allowing a credit on said purchase-money for $16,000 paid for expenses of sale by my associates and myself, and not having myself made out the statement showing how these annual installments were made up and not having at the time access to the statement made up by J. W. Mathews, upon which statement the deed was based, and without making a

fresh calculation of my own, I made a conditional admission which I now withdraw as being erroneous. I have *no*ly to refer to the contract of January 30, 1880, entered into between J. N. Camden, Geo. L. Peyton, and myself, and to the statement of J. W. Mathews and his accompanying letter just filed with this deposition and marked respectively "J. W. M. No. 1" and "J. W. M. No. 2," to set this matter in its true light. I quote from the contract of January 30, 1880, as follows:

404 "The said Stuart agrees to sell the said White Sulphur Springs property to the said company, to be organized as aforesaid, upon the following terms and conditions, viz: The debts not owned or controlled by the said Stuart, and which will be paid in full, or in part, out of the purchase-money of said property, shall be paid by the said company according to the terms of the decree of said court.

"The debts owned or controlled by the said Stuart, and which are to include the whole of the debt known as the Singleton debt, secured by the first lien on said property, and which he is to acquire, prior to those of class 9 (Comm'r Mathews' report), shall be paid in full, and on those debts of said class 9, owned by said Stuart, he shall receive twenty-five cents on the dollar and five thousand dollars in addition," &c.

It will thus be seen that J. W. Mathews, who was at the time (1880) and now cashier of the Lewisburg bank and brother of Henry M. Mathews, with the contract above quoted before him, made out the installments in accordance with said contract, and that the president of said company gave interpretation of said contract, agreeing with the statement of said J. M. Mathews, by executing the bonds in accordance with said statement.

The amount to be paid by said Greenbrier White Sulphur Springs Company to deponent was not to be *gua*ged by the bid at which it was knocked down to deponent, with a percentage on debts in class 9 amounting to about $50,000; but it was to be *gua*ged by a sum which, after paying expenses of sale, would pay said Stuart's claim prior to class 9 in full, and pay about $50,000 on his claims embraced in class 9, say $49,694.45.

This makes the net amount which deponent was to receive for the property $390,942.89. It will be seen that the mode of calculating interest and applying payments of purchase-money were highly advantageous to the springs company.

405 *Exception.*

Col. Ellett, counsel for complainants in second suit, excepts to the foregoing statement or deposition so far as it undertakes to explain and vary the written contracts between him, said Stuart, the witness, and his associates, and the deed to the defendant company as illegal evidence.

And further this deponent saith not.

(Signed) W. A. STUART.

I, Wm. J. Leake, special master commissioner of the United States circuit court for the district of West Virginia, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me at the times and places above mentioned.

Given under my hand this 1st day of June, 1887.

(Signed) WM. J. LEAKE,
Special Com'r.

406 The exhibits referred to in the depositions and filed with the report of Com'r Leake are in words and figures following, to wit:

STUART, Who Sues, &c.,
vs.
GREENBRIER W. S. S. Co. and Others

and

KNABE & Co.
vs.
SAME.

Exhibits filed with the deposition of Wm. A. Stuart on cross-examination before Com'r Leake, on August 13th, 1886, in answer to question of Chas. S. Stringfellow, Esqr.

EXHIBIT J. W. K. No. 1.

"RICHMOND, VA., *April 29th*, 1882.

Received of Henry M. Mathews, president of the Greenbrier White Sulphur Springs Company, forty of the mortgage bonds of the said company of ($500) five hundred dollars each, and numbered from one hundred and one to one hundred and forty, inclusive, and certificates of one hundred shares of the stock of said company, which I have purchased—the stock at par and the bonds at fifty cents; also sixty of the said mortgage bonds, numbered one hundred and forty-one to two hundred, inclusive, as collateral security for certain notes of the said company which I hold; and also one hundred of said bonds, numbered from two hundred and one to three hundred, inclusive, and certificates of two hundred and fifty shares of said stock, which I will endeavor to dispose of for said company upon the same terms on which I have purchased said stock and bonds."

A copy.
Teste: WM. J. LEAKE, *Com'r.*

407 EXHIBIT J. W. K. No. 2.

"Greenbrier White Sulphur Springs Company—Geo. L. Peyton, managing director; B. F. Eakle, chief clerk.

WHITE SULPHUR SPRINGS, GREENBRIER CO., WEST VA.,
Sept. 11, 1882.

Jno. P. Branch, Esq.

DEAR SIR: I enclose 2 notes of $10,000 each, at 4 mos. from Aug. 1st and Sept. 1st, respectively; also T. Branch, Merchants' b'k, $233.25 on acc't of interest. Gov. Mathews requests me to say that the balance will be sent at an early date.

The governor requests that you will forward to him by express the bonds not disposed of.

Respectfully, JNO. C. WOOD.

The governor has been so occupied with other matters that I could not get this fixed sooner."

A copy.

Teste: WM. J. LEAKE, *Com'r.*

EXHIBIT J. W. K. No. 3.

"Greenbrier White Sulphur Springs Company—Geo. L. Peyton, managing director; B. F. Eakle, chief clerk.

WHITE SULPHUR SPRINGS, GREENBRIER CO., WEST VA.,
Sept. 16, 1882.

Jno. P. Branch, Esq.

DEAR SIR: On the 14th inst. I sent some exchange to Gov. Mathews, then in your city, expecting him to provide for coupons due 15th. By some mishap the gov. did not get my letter, which will now have to come back here, as the checks are all endorsed to his order. I write, by instruction of the gov., to explain why the coupons were not provided for.

Respectfully, JNO. C. WOOD."

A copy.

Teste: WM. J. LEAKE, *Com'r.*

408 EXHIBIT J. W. K. No. 4.

"Greenbrier White Sulphur Springs Company—Geo. L. Peyton, managing director; B. F. Eakle, chief clerk.

WHITE SULPHUR SPRINGS, GREENBRIER CO., WEST VA.,
July 5th, 1882.

John P. Branch, Esq.

DEAR SIR: Have you disposed of any of the mortgage bonds?
Very truly yours, HENRY M. MATHEWS."

A copy.
Teste: WM. J. LEAKE, *Com'r.*

EXHIBIT J. W. K. No. 5.

"Greenbrier White Sulphur Springs Co.—Geo. L. Peyton, managing director; B. F. Eakle, chief clerk.

WHITE SULPHUR SPRINGS, GREENBRIER CO., WEST VA.,
Sept. 27, 1882.

Jno. P. Branch, Esq.

DEAR SIR: Please deliver to Col. W. W. Gordon the mortgage bonds of this company now in your possession and unsold.
Very truly yours, HENRY M. MATHEWS,
Pres't G. W. S. S. Co."

A copy.
Teste: WM. J. LEAKE, *Com'r.*

EXHIBIT J. W. K. No. 6.

$12,858.92. MAY 1st, 18-2.

At sight pay to the order of the Bank of Lewisburg twelve thousand eight hundred and fifty-eight $\frac{92}{100}$ dollars, value received, and charge the same to account.

THE GREENBRIER WHITE SUL'R SPRINGS CO.,
By HENRY M. MATHEWS, *Pres't.*

To Messrs. Thos. Branch & Co., Richmond, Va.

(Cancelled stamp:) Paid. Third teller. May 3rd, 1882. First National bank.

409 Endorsed as follows: "Pay H. C. Burnett, Esq., cashier, or order, for acc't of Bank of Lewisburg, W. Va. J. W. Mathews, cashier."

A copy.
Teste: WM. J. LEAKE, *Com'r.*

EXHIBIT J. W. K. No. 7.

1886, AUGUST 17TH.

Extract from pages 206 & 207 of def't Co.'s cash book, made by com'r and filed by counsel for Jno. W. Kerr and Merchants' National Bank of Richmond.

W. J. LEAKE, *Com'r.*

As follows:

EXHIBIT J. W. K. No. 7.

410 *Greenbrier White Sulphur, W. Va., May,* 1882.

278	Bonds	40 bonds, 201 purchased by Jno. P. Branch (rebate opposite)		20,000
504	Capitol stock	100 shares purchased by J. P. Branch at par		10,000
4	Bills payable	3 mos., April 29, due Oct. 1, '89		10,000
		4 " " 29, " Sep. 1, '90		10,000
		5 " " 29, " Oct. 1, '91		10,000
		4 mos., Apr. 15, due Aug. 15–18, '93		2,000
		Endorsed: G. L. Peyton; discovered at Salem, Va.		
23	Board	C. M. Garrood	15	84 50
		Mr. Griffith	47 50	
		Mr. Jones, &c.	12 50	
		" Shepher, &c.	2	
		Sundries	2 50	
		"	5	
102	Water	J. B. Dodson	5	25
		Rev. P. Slaughter	5	
		W. H. Travers	10	
		J. L. Eubank	5	
		Raw. Stalnaker		25
				62,134 50

EXHIBIT J. W. K. No. 7.

411 *Greenbrier White Sulphur Spring Co., West Va.*, 1882.

				Balance forwarded		5,647 56
	392	Rebate on bonds	#869	50% on 40 bonds, J. P. Branch	10,000	
	168	Interest	"	Disc't on the following notes:	1,141 08	
				Jan'y 11, 4 mos., 5,000	137 77	
				" 20, 4 " 5,000	137 77	
				Feb'y 20, 4 " 5,000	137 77	
				Mar. 3, 4 " 5,000	140	
				" 22, 4 " 5,000	141 10	
				Ap'l 29, 3 " 10,000	208 88	
				" " 4 " 10,000	282 22	
				" " 5 " 10,000	348 89	
					1,534 40	
				Less ret. interest on 6 notes, 5,000 ea., & 1 of 6,000, opposite	393 32	
				See statement of J. P. Branch, Apr. 29:		
	3	Bills payable	#870	J. P. Branch, May 11–14	51	5,000
			#871	" " 20–23	58	5,000
			#872	" June 10–13	41	6,000
			#873	" " 11–14	42	5,000
			#874	" " 20–23	59	5,000
			#875	" July 3–6	56	5,
			#876	" " 22–25	61	5,
				These notes retired before due, and 3 notes of 10,000 is substituted for 6 of 5,000 notes of 6,000 paid.		
			#877	Grant Peterkin, May 2–5	38	7,214 29
			#878	H. M. Mathews & G. L. Peyton, May 3–6	71	1,500
	168	Interest		Discount on #93		50
174	10	Farm & yard labor		C. B. 198		225
	393	Dam		Hirdsons' hands, C. B. 198	38 39	86 69
				Huxhal's " " 201	48 30	
	258	New hotel		Hudson's " C. B. 198	28 80	166 93
				Lester's " " 201	138 13	
	274	New club house		Hudson's " " 198	7 50	151 69
				Lester's " " 201	144 19	
	258	Repairs			29 18	426 25
					397 07	
	258	New hotel		Cleaning after plasterers		16 25
	173	Hotel service		C. B. 203		308 40
	248	T. S. Lester	#879	Paid him on acc't		100
	230	Live stock	880	Capt. Fitz, 2 pigs		8
					57,404 58	5,647 56

412 *Balance-Sheet, Greenbrier White Sulphur Springs Co., Saturday, October 30, 1880.*

Assets.

Bills receivable		100 00	
Real estate		22,742 58	
Cash		186 67	
Board, stock	1,971		
Bar, do.	392		
Fuel, do.	200		
Livery, do.	1,830		
		4,393 00	
Improvements		59,264 20	
Furniture		45,341 67	
Tools and implements		409 47	
Geo. L. Peyton		405 44	
Geo. L. Peyton & Co.		8,436 09	
Live stock		2,933 55	
J. N. Camden		358 65	
H. M. Mathews		931 27	
W. A. Stuart		717 19	
O. H. Chalkley & Co.		1,487 38	
W. P. Thompson		403 40	
A. F. Mathews		96 75	
Sundry debtors		519 12	
			148,726 43

Liabilities.

Capital stock	50,000 00	
Bank of Lewisburg	8,619 68	
Bills payable	10,000 00	
Sundry creditors as per list on last page	23,617 84	
		92,237 52
Profit		$56,488 91

413 *List of Liabilities Not Enumerated on Balance-Sheet.*

Purcell, Ladd & Co.	1,128 50
West, Johnston & Co.	535 23
Oscar Cranz	1,728 47
Jno. L. Morrison	156 65
C. C. Nickell & Bro.	128 58
Henry Springgs	12 62
P. J. Rowan	12 61
G. W. Anderson & Sons	932 03
Burke & Bradley	933 57
Witz & Holt	977 00
Davenport & Morris	1,430 90
T. C. Basshor & Co.	12,720 42

Henry Bucker	12 00	
Watkins, Cottrell & Co.	55 37	
Hugh McIlhany	49 80	
Poyutz & Watson	412 80	
Hodges Bros.	483 96	
Camden Cons. Oil Co.	91 75	
S. S. Cottrell & Co.	1,108 04	
Jos. P. Winston & Co.	333 02	
C. Y. Davidson & Co.	374 52	
		$23,617 84
		12,720 42
		10,897 42
		2,000
		12,897 42
Gilbert & Barker M'f'g Co.		2,650 00

414 *Abstract of Profit & Loss Account.*

Gain on board, hotel	74,779 10	
" " bar, do.	5,291 78	
" " board, Caldwell house	5,558 11	
" " bar, do.	520 16	
" " bath	1,295 24	
" " billiards	647 52	
" " bowling alley	350 42	
" " cigar stand	602 68	
" " water	241 93	
" " livery	26 52	
" " privileges	3,575 00	
Receipts from laundry	1,172 89	
		$94,061 35
Expense	7,164 63	
Disc't and interest, Nat'l Mech's' note	106 67	
Wages, servants and help	21,016 51	
Insurance	2,142 53	
Fuel	1,592 78	
Advertising	1,064 19	
Ice	1,915 40	
Band	1,324 35	
Loss by fire	1,245 38	
		37,572 44
		$56,488 91

415 EXHIBIT "BALANCE-SHEET." Filed with Deposition of W. A. Stuart.

Balance-Sheet, Greenbrier White Sulphur Springs Co., Saturday, October 30, 1880.

Assets.

Bills receivable		$100 00
Real estate:		
Com's & charges	$15,071 65	
Int. for 1880 on $290,000	7,670 93	
		22,742 58
Cash		186 67
Board, stock	1,971 00	
Bar, do.	392 00	
Fuel, do.	200 00	
Livery, do.	1,830 00	
		4,393 00
Improvement		59,264 20
Furniture		45,341 67
Tools and implements		409 47
Geo. L. Peyton		405 44
Geo. L. Peyton & Co.		8,436 09
Live stock		2,933 55
J. N. Camden		358 65
H. M. Mathews		931 27
W. A. Stuart		717 19
O. H. Chalkley & Co.		1,487 38
W. P. Thompson		403 40
A. F. Mathews		96 75
Sundry debtors		519 12
		$148,726 43

Liabilities.

416	Capital stock	$50,000 00	
	Bank of Lewisburg	8,619 68	
Bills payable		10,000 00	
Sundry creditors, per list on last page		23,617 84	
			92,237 52
Profit			$56,488 91

Abstract of Profit & Loss Account.

Gain on board, hotel	$74,779 10
" " bar, do.	5,291 78
" " board, Caldwell house	5,558 11
" " bar, do.	520 16
" " bath	1,295 24
" " billiards	647 52
" " bowling alley	350 42

Gain on cigar stand		$602 68
" " water		241 93
" " livery		26 52
" " privileges		3,575 00
Receipts from laundry		1,172 89
		$94,061 35
Expense	$7,164 63	
Disc't and interest, Nat. Mech's' note	106 67	
Wages, servants and helps	21,016 51	
Insurance	2,142 53	
Fuel	1,592 78	
Advertising	1,064 19	
Ice	1,915 40	
Band	1,324 35	
Loss by fire	1,245 38	
		37,572 44
		$56,488 91

417 *List of Liabilities Not Enumerated on Balance-Sheet.*

Purcell, Ladd & Co.	$1,128 50
West, Johnston & Co.	535 23
Oscar Cranz	1,728 47
Jno. L. Morrison	156 65
C. C. Nickell & Bro.	128 58
Henry Springgs	12 62
P. J. Rowan	12 61
G. W. Anderson & Sons	932 03
Burke & Bradley	933 57
Witz & Holt	977 00
Davenport & Morris	1,430 90
T. C. Basshor & Co.	12,720 42
Henry Buckner	12 00
Watkins, Cottrell & Co.	55 37
Hugh McIlhany	49 80
Poyutz & Watson	412 80
Hodges Bros.	483 96
Camden Cons. Oil Co.	91 75
S. S. Cottrell & Co.	1,108 04
Jos. P. Winston & Co.	333 02
C. Y. Davidson & Co.	374 52
	$23,617 84
	12,720 42
	$10,897 42
	2,000 00
	$12,897 42
Gilbert & Barker M'f'g Co.	$2,650

418 EXHIBIT "J. C. W.," with Deposition of John C. Wood.

WHITE SULPHUR SPRINGS, W. VA., —— —, 1885.

Greenbrier White Sul. Sp'gs Co. to Jno. C. Wood, Dr.

1882. 1. To balance due for services as book-keeper, sec't'y, & treas., to date $200 00

EXHIBIT "J. W. K. No. 10." Filed with Deposition of J. W. Kerr.

Merchants' National Bank, Richmond, Virginia.

John P. Branch, president. F. R. Scott, vice-president.
J. F. Glenn, cashier.

$20,000. RICHMOND, VA., *April* 29, 1882.

On demand after date I promise to pay to myself or order, at the Merchants' National Bank of Richmond, Va., — dollars for value received, having deposited as collateral security for the payment of this and any other liability of — to the holder hereof, now due or to become due, or that may hereafter become due, or that may hereafter be contracted, the following property, with authority to use, transfer, or hypothecate said collaterals, it being required, on payment or tender at maturity of above amount, that the holder hereof shall return an equal quantity of said securities, and not the specific security deposited, viz., $20,000 White Sulphur Springs Co. bonds, 100 shares White Sulphur Springs Co. stock, the market value of which is now $—, with the further right to call for additional security, in case there should be a decline in the market value thereof, and on failure to respond according to the tenor of this obligation said obligation shall be deemed to be due and payable without demand or notice, with full power and authority to the holder hereof to sell and assign and deliver the whole of the above-mentioned security, or any part thereof, or any substitute therefor, or any additions thereto, at the broker's board or at public or private sale at the option of the said holder or his assigns, on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, at any time or times thereafter, without demand, advertisement, or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said above-mentioned liabilities as said holder or his assigns shall deem proper, returning the overplus to the undersigned. The maker and endorser of this note hereby waive any benefit of exemption under homestead or bankrupt laws as to this debt.

(Signed) JNO. W. KERR.

(Endorsed thus:) Jno. W. Kerr.

419 EXHIBIT J. W. K. No. 11. Filed with Deposition of Jno. W. Kerr.

STATE OF WEST VIRGINIA.

The Greenbrier White Sulphur Springs Company.

Number of shares. (Eagle.) Number of certificate.

This is to certify that John W. Kerr, Esqr., proprietor of one hundred shares, of one hundred dollars each, of the capital stock of the Greenbrier White Sulphur Springs Company, subject to all the rights of the said Greenbrier White Sulphur Springs Company under their charter and articles of association, and transferable in person or by lawful attorney on surrender of this certificate.

Dated at Greenbrier White Sulphur Springs, West Virginia, this 29th day of April, 1882.

(Signed) HENRY M. MATHEWS, *President.*
—— ——, *Secretary.*

(On back of certificate:) For value received the undersigned hereby assign- and transfer- unto —— —— — shares of the capital stock of the Greenbrier White Sulphur Springs Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf to make and execute all necessary acts of assignment and transfer on the books of said company.

In witness whereof — have hereunto set — hand and seal this 29th day of April, 1882.

(Signed) JNO. W. KERR.

Sealed and delivered in presence of—
(Signed) C. E. REDFORD.

420 "F. R. S. No. 1."

RICHMOND, VA., *April* 29, 1882.

Gov. Henry Mathews, pres't White Sulphur Springs Co., W. Va.

DEAR SIR: We have this day received from you two hundred (200) bonds, $500.00 each, of the White Sulphur Springs Co., say $100,000, $30,000 of which are security for the notes of the said company which we now hold. The balance, $70,000, to be sold by us at 50, and 350 shares of the company's stock to be sold at par; we to have option of taking the $30,000 bonds on the same terms as the $70,000.

We now have to advise that we have sold 100 shares of stock at par and $20,000 bonds at 50. We credit your account with $20,000.

Yours truly, THOS. BRANCH & CO.

Bonds Nos. 101 and 300, inclusive, $500.00 each.
(Signature by J. P. Branch.)

RICHMOND, VA., *April* 29, 1882.

Mr. Henry M. Mathews, pres't Greenbrier White Sulphur Springs Co., W. Va.

DEAR SIR: Enclosed please find statement acc. showing to y'r credit $12,858.92.

Yours truly, THOMAS BRANCH & COMPANY.
CHRISTIAN.

Enc. 1.

RICHMOND, VA., *Ap'l 29th*, 1882.

The White Sulphur Springs Company.

1882. *Debits.*

Jan'y 11.	Note due this day		5,000
Jan'y 20.	Note due this day		5,000
421 Feb'y 20.	Note due this day		5,000
M'ch 3.	Do. do.		5,000
M'ch 22.	Note due this day		5,000
Ap'l 29.	Notes not yet due but ch'g'd as of Ap'l 29, as follows:		
6 notes 5,000 each		30,000	
1 note 6,000		6,000	
		$36,000	
Less rebate		393 32	
			35,606 68
			60,606 68

Credits.

Jan. 11.	Net proceeds note, 5,000.		
Jan. 11.	4 mos., 8%	4,862 23	
Jan. 20.	Net proceeds note, 5,000.		
Jan. 20.	4 mos., 8%	4,862 23	
Feb. 20.	Net proceeds note, 5,000.		
Feb. 20.	4 mos., 8%	4,862 23	
M'ch 3.	Net proceeds note, 5,000.		
M'ch 3.	4 mos., 8%	4,860	
M'ch 22.	Net proceeds note, 5,000.		
M'ch 22.	4 mos., 8%	4,858 90	
Ap'l 29th.	$20,000 bonds (W. S. S. Co.) at 50 }	20,000	
Ap'l 29th.	100 shrs. stock (W. S. S. Co.) at 100 }		
Ap'l 29.	Net proceeds 3 notes of 10,000 00 ea.		
Note Ap'l 29, 3 mos.		9,791 12	
" " 29, 4 "		9,717 78	
" " 29, 5 "		9,651 11	
		29,160 01	
			73,465 60
			$12,858 92

Ap'l 29, 1882.

T. B. & CO.,
CHRISTIAN.

422 RICHMOND, VA., *Ap'l 29th*, 1882.

H. M. Mathews, Esq., Pr. White Sulphur Springs Co.

DEAR SIR: We hand you herewith nn. of White Sulphur Springs Co. as follows:

Note	Feb. 11th, 4 mos., for	$5,000 00
"	" 10th, 4 mos., for	$6,000 00
"	Jan. 11th, 4 mos., for	$5,000 00
"	" 20th, 4 mos., for	$5,000
"	Feb. 20th, 4 mos., for	$5,000
"	Mar. 3rd, 4 mos., for	$5,000
"	" 22nd, 4 mos., for	$5,000

And have received of you notes of the White Sulphur Springs Co. as follows:

Note	Ap'l 29th, 3 mos., for	$10,000
"	" 29th, 4 " "	$10,000
"	" 29th, 5 " "	$10,000

Yours truly, THOS. BRANCH & CO.

Body by C. E. Redford, clerk; signature by J. P. Branch.

(*Telegram.*)

JULY 8, 1882.

Gov. Henry Mathews, White Sulphur Springs, W. Va.,:

Just returned home. Have not disposed of any bonds. You should make Stuart pay up.

JOHN P. BRANCH.

Answer to D. H.
J. W. K.
All by John W. Kerr.

423 RICHMOND, VA., *Sept. 18th*, 1882.

Jno. C. Wood, Esq., sec't. Greenbrier White Sulphur Sp'gs, Greenbrier Co., W. Va.

DEAR SIR: Your letter of the 16th received. I regret that I did not see the gov. when he was here.

If the remittance has not been made, it should be done at once, to provide for the coupons. If not, it will prevent any further sale of them.

Yours truly, JOHN P. BRANCH.

RICHMOND, VA., *Sept. 29th*, 1882.

Gov. Henry M. Mathews, pres't White Sulphur Springs, Greenbrier Co., W. Va.

DEAR SIR: We send you by express $25,000 White Sulphur Springs bonds, Nos. 251 to 300, inc., $500 each. We keep the balance, as we yet hope to place them.

Enclosed we hand you note for $10,000, in renewal of the one due 2nd Oct. We send also, per express with bonds, cetf. No. 22, 250 shrs. stock W. S. S. Co.

Yours truly, THOS. BRANCH & CO.

P. S.—When do you propose to hold the stockholders' meeting?

JOHN P. BRANCH.

Signature by John P. Branch.

424 EXHIBIT "F. R. S. No. 2."

$3,700.00. WHITE SULPHUR SPRINGS, W. VA., *June* 20, 1882.

Four months after date the Greenbrier White Sulphur Springs Company promises to pay to the order of Geo. P. Stacy, Esq., thirty-seven hundred dollars, value received. Negotiable and payable at Bank of Lewisburg, W. Va.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres.*

Due Oct. 23rd–26th; No. 75, 20–23 Oct.

Protested for non-payment Oct. 23, 1882.
13238. A. E. LEONARD, *N. P.*

(Endorsed:) Geo. P. Stacy. Pay J. W. Mathews, Esq., or order, for account Merchants' National bank, Richmond, Va.

(EXHIBIT "F. R. S. No. 3.")

$1,000. WHITE SULPHUR SPRINGS, W. VA., *Aug.* 28, 1882.

Sixty days after date the Greenbrier White Sulphur Springs Company promises to pay to the order of Geo. P. Stacy, Esq., one thousand dollars, value received. Negotiable and payable at Bank of Lewisburg.

GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
Per HENRY M. MATHEWS, *Pres't.*

1009. Due 20–23 Oct.
Protested for non-paym't Oct. 23, '83.
No. 21. 13412.

(Endorsed:) Geo. P. Stacy. Pay T. A. Bledsoe, cash'r, or order, for acc't of Planters' Nat'l bank, Richmond, Va. Pay J. W. Mathews, cashier, or order, for collection and credit National Valley bank, Staunton, Va. Thomas A. Bledsoe, cashier.

425 "F. R. S. No. 4."

Merchants' National Bank, Richmond, Virginia.

John P. Branch, president. F. R. Scott, vice-president.
J. F. Glenn, cashier.

$10,000. RICHMOND, VA., *August 1st*, 1882.

Four months after date we promise to pay to ourselves or Thomas Branch & Co. or order, at the Merchants' National Bank of Rich-

mond, Va., ten thousand dollars, for value received, having deposited as collateral security for the payment of this and any other liability of —— —— to the holder hereof, now due or to become due, or that may hereafter be contracted, the following property, with authority to use, transfer, or hypothecate said collaterals, it being required, on payment or tender at maturity of above amount, that the holder hereof shall return an equal quantity of said securities, and not the specific security deposited, viz., fifteen thousand dollars ($15,000.00) of White Sulphur Springs Company bonds, the market value of which is now $——, with the further right to call for additional security in case there should be a decline in the market value thereof, and on failure to respond according to the tenor of this obligation said obligation shall be deemed to be due and payable without demand or notice, with full power and authority to the holder hereof to sell and assign and deliver the whole of the above-mentioned security, or any part thereof, or any substitute therefor, or any additions thereto, at the brokers' board or at public or private sale, at the option of the said holder or his assigns, on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, at any time or times thereafter, without demand, advertisement, or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said above-mentioned liabilities, as said holder or his assigns shall deem proper, returning the overplus to the undersigned. The maker and endorser of this note hereby waive any benefit of exemption under homestead or bankrupt laws as to this debt.

(Signed) THE GREENBRIER WHITE SULPHUR SPRINGS CO.
HENRY M. MATHEWS, *Pres'd't.*

"F. R. S. No. 5."

(Same here as "F. R. S. No. 4.")

$10,000. RICHMOND, VA., *September 1st*, 1882.

Four months after date we promise to pay to ourselves or Thomas Branch & Co. or order, at the Merchants' National Bank of Richmond, Va., ten thousand dollars, for value received, &c. (Same from here as Exhibit "F. R. S. No. 4") fifteen thousand dollars of White Sulphur Springs Company bonds, the market value of which, &c. (Same as "F. R. S. No. 4.")

(Signed) THE GREENBRIER WHITE SULPHUR SPRINGS CO.,
By HENRY M. MATHEWS, *Pres.*

Protested for non-payment Jan'y 4, 1882. Fee, $1.00. J. F. G., N. P.

426 "F. R. S. No. 6."

$10,000.00. RICHMOND, VA., *Ap'l 29th*, 1882.

Five months after date we promise to pay to ourselves or order, at the Merchants' National Bank of Richmond, Va., ten thousand

dollars, for value received, having deposited, &c. (same as No. 5), fifteen thousand dollars ($15,000) of Greenbrier White Sulphur Springs Co. 1st-mortgage bonds, 30 bonds, No. 171, @ 200 ea., $500, the market value of which, &c. (same as "F. R. S. No. 4").

(Signed) THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *Pres'd't.*

29–2 Oct.

(Endorsed:) The Greenbrier White Sulphur Springs Co., by Henry M. Mathews, pres.

Exhibits Filed by Geo. L. Peyton in Answer to 3rd Ques. Propounded by W. A. Stuart.

In the Circuit Court of the U. S. for the District of West Virginia.

STUART
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO.

&

WM. KNABE & CO., Who Sue, &c.,
vs.
SAME.

Exhibits filed by Geo. L. Peyton. See his answer to 3rd question propounded by Wm. A. Stuart Dec. 1, 1886. See depositions, page —.
W. J. LEAKE, *Com'r.*

Agreement made this 30th day of January, 1880, between Geo. L. Peyton of the one part and W. A. Stuart of the other part, witnesseth:

That the parties hereto have joined in an agreement with J. D. Camden, of even date with this agreement, looking to and
427 providing for the purchase of the White Sulphur Springs, in Greenbrier county, West Virginia, in the proportions of one-half to the said Camden and a fourth each to the said Peyton and Stuart; and whereas the said Stuart, to enable the said Peyton to unite in the purchase of said springs, hath postponed payments which would be due him as a creditor under the sale for many years, and has agreed to advance for said Peyton the one-fourth of fifty thousand dollars, the amount necessary to be paid in the ensuing season: Now, it is agreed by the said Peyton that in consideration of the premises the said Stuart shall be exonerated by him and held free of accountability as to the salary which shall be paid to the superintendent or chief manager of said springs, after the contemplated purchase, until such time as the said Peyton shall reimburse said Stuart for all advancements made for him on said purchase or for the improvement and furnishing the property or on the obligations mentioned in the agreement aforesaid with J. D. Camden, and until such time as said Stuart's debts referred to in said agreement (except the debt of two hundred thousand dollars) are paid; and the said Peyton moreover agrees to pay six per cent. interest

annually on all advances made for him, and that such advances are to be regarded as a lien upon his interest in the property aforesaid until refunded, and that said Stuart shall have any scrip of the company to which said Peyton might be entitled by reason of such advancements; such scrip to be held as collateral security until the advances are refunded, and any dividends thereon to be paid said Stuart and credited against such advancements and then turned over to said Peyton.

Witness the following signatures and seals:

GEO. L. PEYTON. [SEAL.]
W. A. STUART. [SEAL.]

ADDENDUM.—It being necessary for Geo. L. Peyton to contribute five thousand dollars as his share of twenty thousand dollars of indebtedness of the Greenbrier White Sulphur Springs Company, it is agreed between him and W. A. Stuart that said Stuart will
428 raise said amount for said Peyton on his paper on the same terms and conditions as are set forth in the agreement above, and that henceforth no further obligation shall be upon said Stuart to raise money or make advances for said Peyton.

Witness the following signatures and seals, December 3rd, 1880, in duplicate.

GEO. L. PEYTON. [SEAL.]
W. A. STUART. [SEAL.]

WHITE SULPHUR SPRINGS,
GREENBRIER CO., W. VA., *Sept. 1st*, 1881.

Received of Geo. L. Peyton a certificate for three hundred and seventy-five shares of the capital stock of the Greenbrier White Sulphur Springs Company, of one hundred dollars each, with a transfer of the same on the back of said certificate authorizing —— —— to assign and transfer the said three hundred and seventy-five shares of stock.

This stock I hold with the consent of the said Peyton as collateral security for any advancements or endorsements made for him as one of the purchasers or one of the stockholders of the Greenbrier White Sulphur Springs, or as an individual, and when I am relieved of liability on account of all such endorsements, and have returned to me all such advancements, I am to return to said Peyton the scrip aforesaid. It is further agreed that all dividends accruing on said stock shall also be applied by me to reduce my liabilities or advancements for said Peyton.

Witness my hand—

W. A. STUART.

"X" 10, G. L. Peyton's answer.

429 RICHMOND, VA., *Nov. 4th*, 1882.

I have this day bought of Geo. L. Peyton his stock in the Greenbrier White Sulphur Springs Company on the basis of cost and five thousand dollars. I am to give up his paper, including

discounts and interest paid, and pay Dr. Moorman about four thousand dollars and enough in addition to make five thousand dollars. Said Peyton is to have his salary to 1st January, so far as it has not been realized from the company, after taking from his account and charging back to said Stuart any board bill against said Stuart or his family which has been charged to said Stuart. Said Peyton is to throw no obstacles in the way of the said company regaining or holding possession of their property, and I release any claim I have to any of his salary. Any amount I pay said Peyton on his salary I am to hold as a debt against the White Sulphur.

W. A. STUART.

"BOUDAR NO. 1." Deposition of Col. Peyton, Quest. 5.

Trial Balance, December 31, 1880, *Greenbrier White Sulphur Springs Co.*

1.	Bills payable		33,101 67
5.	Bills receivable	689	
6.	Real estate	46,408 08	
10.	Board	2,340 84	
27.	Cash	1,197 58	
31.	Bar	387 75	
91.	Livery	2,222 78	
101.	Water	187 26	
131.	Hardware	199 68	
133.	Improvements	62,139 30	
141.	Expense	111 92	
150.	Ed. Bailey	309 17	
158.	Tools & implements	409 47	
	169. Interest	978 53	
430	171. Wages	326 17	
	174. Farm & yard labor	406 91	
176.	New construction	558 53	
178.	Repairs	189 12	
186.	Furniture	45,541 54	
192.	Office expense	214 25	
204.	Fuel	293 49	
219.	Ice	95 17	
220.	Travelling expense	49 85	
223.	G. L. Peyton	1,207 47	
226.	G. L. Peyton & Co.	8,293 24	
230.	Live stock	2,397 45	
234.	Lumber	1,733 74	
256.	New hotel	208 19	
344.	H. H. Marshall	89 25	
	W. R. Johnston	14 50	
	Page McCartney	47 65	
367.	J. C. Neilson	500	
453.	Greenhouse	148 63	
457.	J. N. Camden	358 65	

466.	H'y M. Mathews	931 27	
468.	W. A. Stuart	717 19	
477.	Wm. P. Thompson	403 40	
	Alex. F. Mathews	96 75	
478.	Gilbert & Parker Mfg. Co.		302 10
500.	H'y M. Mathews, "stock ac."	1,000 00	
502.	Capital stock		150,000
		183,403 77	183,403 77

1. The above is a correct statement of the various accounts as they stand on the books of the Greenbrier White Sulphur Springs Company on the 31st December, 1880. Entries were made on October 31, 1880, purporting to show the profits & losses of the company up to that date, and on December 31, 1880, other entries were made to show additional profits.

Sources of Loss from November 1, 1880, *to December* 31, 1880.

Expense	111 92	
Interest	978 53	
Wages	326 17	
Farm and yard labor	406 91	
Repairs	189 12	
Office expense	214 25	
Travelling expense	49 85	
	2,276 75	
Sources of profit for same period:		
Dry Creek bar	70 59	
Net loss		2,206 16

431 *Statement of the Business for the Year* 1880.

Profits as shown to Oct. 31, 1880	56,638 91	
Losses " " Dec. 31, 1880	2,206 16	
		54,432 75

From the above the following sums should be deducted:

Interest for am't ch'g'd to real estate, August 31st, in error	7,670 93	
Interest for am't due on purchase of property to Dec. 31, 1880	21,550	
Less am't paid on same	7,670 93	
	13,879 07	
Real estate, am't ch'g'd in error Dec. 31, should have been expense	375	
Ed. Bailey, ch'g'd to P. & L. in 1881	309 17	
J. N. Camden, " " "	358 65	
W. P. Thompson, " " "	403 40	
H. H. Marshall, " " "	89 25	
P. McCarty, " " "	47 65	

Furniture, am't ch'g'd to this ac. for interest on notes to H. C. Morse & Co. Aug. 31		254	
Taxes, county & State, for 1880		2,523 40	
G. L. Peyton, 8 mos. salary, at $3,000 p'r an'm		2,000	
Livery: Hay bo't in June & paid in Nov.	18		
Repairs, paid in Dec.	3		
		21	
			27,931 52
Balance of profit			26,501 23

2. This showing of profit is subject to still further deductions, but the amount of such deductions can only be ascertained by the testimony of parties familiar with the business of the company or by estimation.

The ledger shows that no part of the open accounts due by the following parties has ever been paid, and as these accounts were included in the assets in summing up the profit for the year, if they are uncollectable, they should be deducted from such profit.

Geo. L. Peyton & Co.	8,293 24	
H'y M. Mathews	931 27	
Alex. F. Mathews	96 75	
		9,321 26

3. Improvement account was made to board account on October 30, 1880, for the board of carpenters, plumbers, painters, and general help engaged in making improvements on hotel, cot-
432 tages, &c., in the sum of $11,000. The entry on the journal states clearly that this is an estimate only, and if too large an estimate, which it seems to be, any deduction made therefrom will effect the profit of the year, as this sum of $11,000 was included in the profit ascertained from the board account.

4. The books show that the following accounts are considered as assets at cost price, together with all freights and other attendant expenses:

Furniture	45,541 54	
Tools and implements	409 47	
Hardware	199 68	
		$46,150 69

and that no entry has been made crediting these accounts by any amount for the customary depreciation in value by reason of use, breakage, stealage, &c.; 10 to 15 % would be a very moderate allowance for such depreciation.

5. Live stock account also stands as an asset of $2,397.45, but it is merely a balance arising from various purchases and sales, and, as the ledger shows no inventory taken of such stock, as it does in other accounts, it may or may not represent an asset.

6. Fuel account also stands as an asset of $243.49, made up of inventory of fuel on hand Oct. 31 and purchases during November and December. It must be presumed that by the 31st December considerable fuel was consumed, and most, if not all, of this asset wiped out.

7. Livery account also stands as an asset of $2,222.78, made up of inventory of stock and feed on hand Oct. 31 and purchases in Nov. & Dec. Amongst the items charged to this account is one in November of $18 for hay bought in June, and should have been charged to profit & loss when paid, as it was not deducted from the profit, as shown by this account on Oct. 31; also one in December, for repairs, of $3, which properly belongs to expense, and one for feed of $205. Some portion of the feed included in this asset
433 must have been consumed before Dec. 31, and the value of such consumption must be deducted from the profits.

8. If there existed any liability on Dec. 31, 1880, which was not entered upon the books at that date, and was properly chargeable to expense, under any of its different heads, such as wages, repairs, insurance, taxes, &c., such amount must be deducted from the profits.

9. The items of $7,570.93 and $375, deducted from the profits in the foregoing statement of the business for the year 1880, and noted as charged to real estate in error, are fully explained by entries on the journal, Octo. 31, 1881, folios 134 and 135.

10. On August 18, 1881, cash book, folio 153, taxes account is charged with the sum of $2,523.40, and the entry particularly sets forth that this amount was for taxes, county and State, due for the year 1880. In Sept., 1881, on the journal an entry is made crediting Geo. L. Peyton with the sum of $3,000, and charging hotel services with same, specifying said amount to be for his salary from May 1, 1880, to May 1, 1881.

Statement of Profit & Loss for the Year 1880.

Sources of profit.

Board, hotel			74,779	10
Board, Caldwell house			5,558	11
Bar, " "			520	16
Bar, hotel			5,291	78
Bath			1,295	24
Billiards			647	52
Bowling alley			350	42
Cigar stand			602	68
Water			241	93
Livery			176	52
Privileges			3,575	
Laundry			1,172	89
Dry Creek bar			70	59
				94,281 94

434 Sources of loss.

Expense:

As of Oct. 31	7,164	63	
" Dec. 31	111	92	
Ch'g'd to real est. in error	375		
Salary to Geo. L. Peyton	2,000		
		9,651	55

Interest:			
As of Oct. 31		106 67	
" Dec. 31		978 53	
Paid on purchase-money		7,670 93	
Due " "		13,879 07	
On notes for furniture		254	
			22,889 20
Wages:			
As of Oct. 31		21,016 51	
" Dec. 31		326 17	
			21,342 68
Insurance, as of Oct. 31			2,142 53
Fuel, " " "			1,592 78
Advertising, " " "			1,064 19
Ice, " " "			1,915 40
Band, " " "			1,324 35
Fire loss, " " "			1,245 38
Farm, yard, & labor, as of Dec. 31			406 91
Repairs, " " "			189 12
Office expense, " " "			214 25
Trav. expense, " " "			49 85
Livery:			
Error in ch'ge Nov.		18	
" " Dec.		3	
			21
Taxes for 1880, paid in 1881			2,523 40
Bad debts, ch'g'd to P. & L. in 1881:			
Ed. Bailey		309 17	
J. N. Camden		358 65	
W. P. Thompson		403 40	
H. H. Marshall		89 25	
P. McCarty		47 65	
			1,208 12
			67,780 71
Net profit as shown by the books			26,501 23

Assets.

Cash			1,197 58
Bills receivable			689
Real estate		23,117 58	
Less	7,670 93		
	375		
		8,045 93	
			15,071 65

Board, inventory of provisions		2,340 84	
Bar, "		387 75	
Livery	2,222 78		
Less	21		
		2,201 78	
Water		187 26	
Hardware		199 68	
Improvement		62,139 30	
435 Tools and implements		409 47	
New construction		558 53	
Furniture	45,541 54		
Less interest	254		
		45,287 54	
Fuel		293 49	
Live stock		2,397 45	
Lumber		1,733 74	
New hotel	208 19		
J. C. Neilson	500		
		708 19	
Greenhouse		148 63	
H'y M. Mathews, stock account		1,000	
Ice		95 17	
Open accounts		9,335 76	
			146,382 81

Liabilities.

Bills payable		33,101 67	
Gilbert & Parker M'f'g Co.		302 10	
W. A. Stuart, bal. of interest	13,879 07		
Less his acc't	717 19		
		13,161 88	
Geo. L. Peyton, am't salary	2,000		
Less his acc't	1,207 47		
		792 53	
Capital stock		70,000	
Taxes, State and county		2,523 40	
			119,881 58
Net profit as shown by the books			26,501 23
Amount of capital stock subscribed			150,000
Amount paid in	70,000		
Less due by H. M. Mathews.	1,000		
		69,000	
Amount paid by profits		26,501 23	
			95,501 23
Balance due on capital stock			54,498 77

11. In making the foregoing statements of the profit & loss for the year 1880 no notice was taken of an entry made Dec. 31, journal folio 61, attempting to increase the showing of profit $23,290.50. The explanation of said entry, as given on the journal, is that this amount is the estimated increased value of the property by reason of buildings and improvements. If this was a correct estimate, then the amount spent in buildings and improvements should
436 have been charged to profit and loss, but instead of this being done the books show that all moneys charged to real estate, say $23,117.58, as well as that charged to improvement, say $62,139.30, also to new hotel, new construction, &c., were regarded as assets; therefore the entry alluded to was an error, for, in making up the profit & loss for the year, the enhancement in value of the property could not exceed the cost of such property and the whole cost of the improvements by one-third the actual cost of said improvements.

12. If the actual figures could be ascertained as regards those accounts now in doubt, it would be shown that very little, if any, profit was in reality made during the year 1880.

(Signed) H. B. BOUDAR.

"BOUDAR NO. 2."

Statement of the business of the Greenbrier White Sulphur Springs Co. for the year 1880, made up from the books of the said company and the deposition of Col. Geo. L. Peyton bearing date of December 1st, 1886.

Sources of Profit.

Board, hotel	68,179 10	
Bar, hotel	5,291 78	
Board, Caldwell house	5,558 11	
Bar, " "	520 16	
Bath	1,295 24	
Billiards	647 52	
Bowling alley	350 42	
Cigar stand	602 68	
Water	241 93	
Livery	176 52	
Privileges	3,575	
Laundry	1,172 89	
Dry Creek bar	70 59	
		87,681 94

437 *Sources of Loss.*

Expense:

As per books	7,276 55	
Am't ch'g'd to real est. in error	375	
Salary to G. L. Peyton, 8 mo's	2,000	
		9,651 55

Interest:			
As per books	1,085 20		
On notes for furniture	254		
Paid on purchase-money and charged to real estate in error	7,670 93		
Bal. due and unpaid on purchase-money for the year 1880	13,879 07		
		22,889 20	
Wages		21,342 68	
Insurance		2,142 53	
Fuel		1,592 78	
Advertising		1,064 19	
Ice		1,915 40	
Band		1,324 35	
Fire loss		1,245 38	
Farm & yard labor		406 91	
Repairs		189 12	
Office expenses		214 25	
Travelling expenses		49 85	
Bad debts ch'g'd to P. & L. in 1881:			
Ed. Bailey	309 17		
J. N. Camden	358 65		
W. P. Thompson	403 40		
H. H. Marshall	89 25		
P. McCarty	47 65		
		1,208 12	
Taxes, county and State, for 1880, paid Aug. 18, '81, per C. B., folio 153		2,523 40	
Livery:			
Hay bought in June, p'd in Nov.	18		
Repairs, sh'd be expense	3		
		21	
			67,780 71
Carried forward (one page to another)			19,901 23
Forward			19,901 23

Sources of Loss Continued.

Bad debts, as per deposition G. L. Peyton, answer to ques'n 5:			
H. M. Mathews	931 27		
A. F. Mathews	96 75		
W. A. Stuart	717 19		
		1,745 21	
Depreciation in value, from use, &c., of furniture, hardware, tools, & implements, in answer to question 8—say, 12 % on $45,896.69		5,507 60	

Fuel consumed in Novem. & Decem., as per answer to 9th question—½ of $243.49		146 74	
438 Feed consumed in Novem. & Decem., as per answer to 10th ques.		250	
Depreciation in value of furniture bought of G. L. Peyton & Co., as per answer to 12th ques., 20% on $35,000		7,000	
Salary to W. W. Gordon & Isaac H. Carrington $500 each, as per answer to 13th question		1,000	
			15,649 55
Net profit			4,251 68

Balance-Sheet, December 31, 1880.

Assets.

Cash			1,197 58
Bills receivable			689
Real estate		23,117 58	
Less	7,670 93		
	375		
		8,045 93	
			15,071 65
Board, inventory of provisions			2,340 84
Bar			387 75
Livery		2,222 78	
Less	21		
	250		
		271	
			1,951 78
Water			187 26
Hardware	199 68		
Tools & implements	409 47		
Furniture	45,541 54		
Less	254		
	45,287 54		
		45,896 69	
Less 12%		5,507 60	
			40,389 09
Furniture of G. L. Peyton & Co.		35,000	
Less 20%		7,000	
			28,000
Improvement		62,139 30	
Less		6,600	
			55,539 30
New construction			558 53
Fuel		243 49	
Less		146 74	
			146 75
Live stock			2,397 45

Lumber		1,733 74	
New hotel	208 19		
J. C. Neilson	500		
		708 19	
Green-house		148 63	
Ice		95 17	
W. R. Johnson		14 50	
			151,557 21

439 Liabilities.

Bills payable		33,101 67	
Gilbert & Parker M'f'g Co.		302 10	
Geo. L. Peyton	2,000		
Less his ac.	1,207 47		
		792 53	
Geo. L. Peyton & Co.	35,000		
Less their ac.	8,293 24		
		26,706 76	
W. A. Stuart, bal. of interest		13,879 07	
Taxes, unpaid for 1880		2,523 40	
W. W. Gordon, salary		500	
J. H. Carrington, "		500	
Capital stock		69,000	
			147,305 53
Net profit			4,251 68
Amount stock subscribed			150,000
" " paid up in cash		69,000	
" " " " " profit		4,251 68	
			73,251 68
" " not paid up			76,748 32

H. M. Mathews owes on his first subscription 1,000

1. In stating the profit arising from board account, the sum of $5,500 was deducted from that account to correct error, as explained by G. L. Peyton in his deposition—see answer to — question—and as he states that a considerable proportion of the remainder of the amount named in the entry of Oct. 30, 1880, was for the board of general help, otherwise engaged than on building and improvements, the further sum of $1,100 was deducted, that being $\frac{1}{5}$ of the amount named by him as covering the whole.

2. In including in the sources of loss the accounts mentioned by G. L. Peyton in answer to question 5 as accounts charged in error, the one *vs.* W. R. Johnson was omitted, as that was paid in 1881: also the one *vs.* J. C. Neilson, as it was not for board, but cash paid him, as it appears, for and on account of the new hotel.

440 3. There being no market at the Springs for such a large lot of furniture, should a sale be at any time desirable the

items of freight, hauling, &c., amounting to over $3,000, would be more properly items of expense, and should have been charged to that account.

(Signed) H. B. BOUDAR.

THE UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

At a district court of the United States for the district of West Virginia, in the fourth judicial circuit of the United States of America, begun and held in the court-rooms, at the city of Charleston, West Virginia, in said district, on the fifth day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth.

Present: The Honorable John J. Jackson, judge.

On Saturday, the 5th day of January, 1884, among the proceedings had were the following, to wit:

C. S. GAY and Others
vs.
THE WHITE SUL. SPRINGS CO. and Others. } In Chancery.

This cause came on this 5th day of January, 1884, to be again further heard upon papers formerly read and the report of the commissioners of sale, asking to be instructed as to the proper manner of disbursing the fund, and was argued by counsel; upon consideration whereof it is adjudged, ordered, and decreed that the commissioners of sale, in disbursing and distributing the proceeds of the sale of the White Sulphur Springs property heretofore made by them under a decree of this court in this cause and in paying therewith the debts heretofore reported and decreed to be paid, shall calculate interest upon the aggregate amount of the principal and interest thereof aggregated as of October 15th, 1875, the
441 date to which the calculations are brought in the report of commissioner H. H. Mathews, heretofore made, filed, and confirmed in this cause, and not upon the original principals alone.

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true copy from the records in my office, at Charleston.

In testimony whereof I hereunto subscribe my name and affix the seal of my said court, at Charleston, this 21st day of April, A. D. 1887, and in the 111th year of the Independence of the United States of America.

[SEAL.]

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

THE UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

At a district court of the United States for the district of West Virginia, in the fourth judicial circuit of the United States of

America, begun and held in the court-rooms, at the city of Charleston, West Virginia, in said district, on the first day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

Present: The Honorable John J. Jackson, judge.

On Tuesday, the 12th day of May, 1885, among the proceedings had were the following, to wit:

C. S. GAY and Others
vs.
WHITE SULPHUR SPRINGS CO. and *als.* } In Chancery.

It appearing from the report of the commissioners of sale this day filed that William A. Stuart, the purchaser of the property
442 heretofore sold under a decree in this cause has made default in the payment of the fourth and fifth bonds executed by him for the same and which became due on the 31st day of March, 1884, and 31st day of March, 1885, respectively, and which amount, as of this date, principal and interest, aggregated to the sum of $160,212.06; upon motion of said commissioners, and the court having maturely considered the same, it is ordered that rule issue against the said William A. Stuart, returnable here on the 23rd day of this month (May), requiring him to appear and show cause, if any he can, why the said property so sold as aforesaid by the commissioners of sale in this cause to him, and which is fully described in the report of sale filed by them, should not be resold at public auction for cash to pay the unsatisfied installments of purchase-money due by him as aforesaid, and why decree should not be made against him for so much of said unpaid purchase-money as the property upon a resale may not pay off and discharge, and the cost of this proceeding.

Service of a copy of this order on the said William A. Stuart shall be taken as equivalent to a service of the rule therein required.

A copy.

Teste: JASPER Y. MOORE,
Clk D. C. U. S., D. W. Va.

THE UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

At a district court of the United States for the district of West Virginia, in the fourth judicial circuit of the United States of America, begun and held in the court-rooms, at the city of Charleston, West Virginia, in said district, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

443 Present: The Honorable John J. Jackson, judge.

On Monday, the 25th day of May, 1885, among the proceedings had were the following, to wit:

C. S. Gay, and *als.*
vs.
The White Sulphur Springs Co. and *als.* } Decree. May T., 1885.

This day Alex'r F. Mathews, who filed exceptions on the 9th day of July, 1884, to the report of settlements made by the comm'rs of sale, with W. A. Stuart and filed June 3, 1884, withdrew the exceptions marked I, II, III, and IV, and by consent of said exceptant and of W. A. Stuart, the questions raised by exception marked V, and the liability of W. A. Stuart for a balance on the third bond, executed by him for the property heretofore sold under decrees in this cause, are continued and reserved by the court for its future action, to be had at the next term of this court; and the court having heard the arguments of counsel, and having duly considered the petition presented by W. A. Stuart on a previous day of this term, asking that the decree entered in this cause on the 5th day of January, 1884, shall be reheard, and that it be vacated and annulled, is of opinion that the petitioner is not entitled to the relief prayed for, and it is therefore adjudged, ordered, and decreed that said relief be refused, said petition rejected, and that the said decree of Jan'y 5, 1884, be in all respects confirmed.

And the said W. A. Stuart then moved the court to quash and discharge the rule awarded against him on a previous day of the term; which motion the court doth hereby overrule; and thereupon the said Stuart, by leave of court given, filed his answer, with exhibits, to said rule; to which the plaintiffs in said rule, the comm'rs of sale in this cause, replied generally; and the same being argued by counsel, the court thereupon offered said Stuart to allow him until tomorrow to make a further settlement with the said comm'rs for the purpose of establishing and having allowed him, if proper,
444 the credits claimed in his said answer upon his fourth and fifth bonds, executed for the property bought by him as aforesaid; but the said Stuart stated in open court that he had in Oct., 1883, turned over to said comm'rs all the claims he held against the White Sul. Sp'gs Co., except the contracts with John Echols and Sam'l Price, trustees, exhibited with his said answer to the rule, which contracts the comm'rs would not accept and credit on his bond, and that therefore it was useless to give the further time offered to settle with said comm'rs; and thereupon the said commissioners of sale stated in open court that, at the instance and request of W. A. Stuart, they had on two occasions gone to the White Sulphur Springs to meet him for the purpose of making settlement with him on account of his said purchase; that they afterwards and for the same purpose met him at Charleston, but that on neither occasion was said Stuart ready and able to make such settlement; and that afterwards, in October, 1883, they went to Wheeling on the same business and met said Stuart there, and, all being then hurried and lacking time, no definite and conclusive settlement was made, but the said Stuart turned over to them a large amount of evidence of debt against the White Sulphur Springs Company—enough, as was supposed, to discharge his first three purchase-money bonds—

and said bonds were surrendered to him and said evidences of debt receipted for by said comm'rs, but an exact and accurate computation and adjustment of the matter was postponed for a calculation and report, to be made by an accountant; to which statement by said comm'rs, the said Stuart in open court assented and admitted its correctness. And it appearing from the report of the comm'rs of sale, filed at the present term, that the said fourth and fifth bonds of W. A. Stuart are now past due and still wholly unpaid, and that they amount, as of the 12th day of May, 1885, to the sum of $160,212.06, it is therefore further adjudged, ordered, and decreed that the said comm'rs of sale, the plaintiffs in said rule, recover from the said
445 Stuart the said sum of of $160,212.06, with interest thereon from the 12th day of May, 1885, and the costs upon said rule, with the right reserved to them to apply for a further decree for any balance that may hereafter be ascertained to be unpaid by the said Stuart on his said third bond, and unless the said Stuart, or some one for him, shall within thirty days from this date pay the said amount now herein decreed against him, then W. A. Quarrier, Jasper Y. Moore, A. C. Snyder, and J. W. Mathews, any one or more of whom may act, said A. C. Snyder being one, who are hereby appointed special commissioners for the purpose, shall proceed, after having advertised the time, terms, and place of sale for four consecutive weeks, by notice published in the "Greenbrier Independent," a newspaper published in the town of Lewisburg, in Greenbrier county, W. Va., and in the "Richmond State," a newspaper published in the city of Richmond, and posted at the front door of the court-house of Greenbrier county, and at some public place or places at the White Sulphur Springs, to resell the property heretofore sold in this cause and bought by W. A. Stuart, consisting of 7,000 acres of land, more or less, known as the "White Sulphur Springs" property, and 2,800 acres, more or less, known as the "Hoke" tract, at the White Sulphur Springs, in front of the hotel, at public auction, to the highest bidder for cash; and it appearing from the deed executed by W. A. Stuart to the Greenbrier White Sulphur Springs Co., and which is here now filed as an exhibit in the cause, that the said Stuart in conveying said 7,000 acres to said company did not retain any lien for his purchase-money on a certain two acres, part of said 7,000 acres, and which is particularly described and defined in said deed, it is further ajudged, ordered, and decreed that said comm'rs shall sell the said 7,000 acres, the "White Sulphur Springs" property, exclusive of said two acres, which shall not be sold unless it shall hereafter prove necessary and until the further order of the court; and the said comm'rs shall make report of their proceedings under
446 this decree to the next term of this court, and out of the purchase-money for the property to be paid them at said resale, when said report shall have been made and confirmed, they shall pay the unpaid costs of this suit, the expenses of said resale, the debts heretofore decreed and allowed in this cause, so far as unpaid, according to their respective amounts, dignities, and priorities, with the interest accrued or yet to accrue thereon, and hold the balance,

if any, subject to the future order of the court and to any liability which may be found upon said Stuart for a balance on his said third bond aforesaid; but before receiving any money under this decree the said comm'rs, or the one acting and receiving the proceeds of said resale, shall give bond in the penalty of $50,000, with security to be approved by the clerk of this court, conditioned according to law; and the said W. A. Stuart thereupon asked the court to allow him an appeal from this decree to the Supreme Court of the United States, but the court refused to do so, because the decrees in this cause fixing the rights of the parties, determining the amounts, dignities, and priorities of the debts and directing sale of the property were all entered more than five years ago and the decree of Jan'y 5, 1884, was simply explanatory of a former decree.

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true copy from the records in my office, at Charleston.

In testimony whereof I hereunto subscribe my name and affix the seal of my said court, at Charleston, this 21st day of April, [SEAL.] A. D. 1887, and in the 111th year of the Independence of of the United States of America.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

447 THE UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

At a district court of the United States for the district of West Virginia, in the fourth judicial circuit of the United States of America, begun and held in the court-rooms, at the city of Charleston, West Virginia, in said district, on the fourth day of November, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and eleventh.

Present: The Honorable John J. Jackson, judge.

On Saturday, the 27th day of November, 1886, among the proceedings had were the following, to wit:

C. S. GAY and *als.*
vs. } Decree. Nov. T., 1886.
THE WHITE SULPHUR SPRINGS CO. and *als.*

This cause came on this 27th day of Nov'r, 1886, to be again heard, and was argued by counsel; upon consideration whereof it it adjudged, ordered, and decreed that the exceptions taken and filed by W. A. Stuart to the report made in this cause by Special Comm'r Jno. A. Preston, pursuant to the decree rendered at the Nov'r term, 1885, be, and the same are hereby, overruled, and that said report be in all respects approved and confirmed; and it appearing from said report that of the two coupons of bond No. 2 of the White Sul. Springs Company which became due on the 15th day of Octo., 1861 and 1862, respectively, as mentioned in said report, the

said W. A. Stuart is entitled to only $4,107.42, as of October 15, 1883, and that Alex'r F. Mathews is the owner and entitled to the balance of said coupons, being $2,915.94, as of Oct. 15, 1883, and that, after giving said Stuart credit on his third bond for the White Sulphur Springs property heretofore bought by him, under a
448 former decree in this cause, for the said sum of $4,107.42, as of Octo. 15, 1883, there is still due from him on said third bond, as of said date, the sum of $2,948.44, it is therefore further adjudged, ordered, and decreed accordingly, and that said comm'rs of sale credit the said third bond of said Stuart with $4,107.42, as of Octo. 15, 1883, instead of with the entire amount of said two coupons, as was done in their report of collections and disbursements dated May 31st, 1884, and filed June 3, 1884, as to which exception No. 5, dated July 4, 1884, taken by Alex'r F. Mathews, is hereby sustained; and the comm'rs of sale in this cause, out of the proceeds of sale heretofore made, or out of the resale ordered by the decree at the May term, 1885, shall pay to the said Alex'r F. Mathews, on account of his said interest and ownership in said two coupons, the said sum of $2,913.94, as of Octo. 15, 1883; and it is further adjudged, ordered, and decreed that the comm'rs of sale, in addition to the amount decreed in their favor against said Stuart by the decree herein entered at the May term, 1885, also recover on the said third bond, after crediting it with the said sum of $4,107.42, as of Octo. 15, 1883, the said further sum of $2,948.44, as of same date, and that the same be provided for and paid out of the proceeds of the resale ordered by said decree of the May term, 1885; but in the event that the decrees rendered in this cause on the 5th day of January, 1884, and the 25th day of May, 1885, so far as they capitalized as of Octo. 15, 1875, the interest on the debts of the White Sulphur Springs Company, and which are now pending on appeal in the Supreme Court of the United States, shall be by said court reversed as to said capitalization and computation of interest, then and in that event the amount to be paid on account of said coupons to Alex'r F. Mathews shall be only $1,896.48 instead of $2,915.94, as hereinbefore decreed as of Octo. 15, 1883, and the additional amount received on said third bond by said comm'rs of sale from W. A. Stuart shall be $8,509.13 instead of $2,948.44, as
449 heretofore decreed. And it is further adjudged, ordered, and decreed that said W. A. Stuart pay the costs of said reference to Comm'r Preston.

A copy.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

This deed, made this 17th day of March, 1882, between A. C. Snyder, special commissioner, of the first part, and William A. Stuart, of the county of Washington and State of Virginia, of the second part:

Whereas Henry M. Mathews, John Echols, W. W. Gordon, W. A. Quarrier, Jasper Y. Moore, and said A. C. Snyder, special commis-

sioner, in pursuance of the authority vested in them by a decree of the district court of the United States for the district of West Virginia, sitting at Charleston, in said district, made on the 19th day of November, 1879, in a suit in equity therein pending, in which C. S. Gay and others were plaintiffs and The White Sulphur Springs Company and others were defendants, did sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree, at which sale the said W. A. Stuart became the purchaser at the price of three hundred and forty thousand five hundred dollars, of which he paid in cash thirty-four thousand and fifty dollars, and for the balance he executed to said commissioners five several bonds for sixty-one thousand two hundred and ninety (61,290) — each, dated on the 31st day of March, 1880, and payable one, two, three, four, and five years after date respectively, with interest thereon from date; and whereas the said court having, by a subsequent decree made in said suit on the — day of May, 1880, confirmed said sale, and by a decree made on the 1st day of March, 1882, appointed said A. C. Snyder a special commissioner for the purpose and directed him to execute to said William A.
450 Stuart a deed, with special warranty, for the property purchased by him at said sale, and reserve a lien upon the face of such deed for the unpaid purchase-money until the same is fully paid and discharged: Now, therefore, this deed witnesseth:

That the said A. C. Snyder, commiss'r as aforesaid, has this day granted and conveyed, and does hereby grant and convey, with special warranty, unto the said William A. Stuart the following real estate, viz., a certain tract or boundary of land lying in the county of Greenbrier and State of West Virginia, containing about seven thousand (7,000) acres, known as the "Greenbrier White Sulphur Springs property," and, by a survey made in 1853 by S. S. Thompson, is bounded as follows: Beginning at two small pines in a hollow where an original corner stood (2 white oaks), thence N. 27 W. 52 poles to three small pines in a hollow, N. 53 W. 263 poles, crossing turnpike road and Howard creek, to a small peach tree in corner of fence, corner to and with Daniel Salsberry; N. 39 W. 19 poles to a stake by pig-pen, N. 78 W. 44 poles to two white oaks in hollow, N. 84 W. 64 poles to dogwood and white oak on the old Vanosdale line, and with N. 54 W. 18 poles to his corner, and with N. 28 E. 140 pos. to a sugar and yellow lynn, N. 78 W. 40 pos. to a white oak and hickory, N. 20 E. 28 pos. to three hickories by a branch, corner to a small survey of Banks, and with N. 10 E. 170 pos. to white oak, pine, and chestnut marked B; N. 43 E. 330 pos. to a large white oak in a bottom, corner to and with Mastin; N. 15 E. 90 pos. to a maple, corner to Haptonstall's survey, on the Dutch run, and with N. 72 W. 52 pos. to a large white oak and white oak sapling, S. 82 W. 50 pos. to 2 white oaks near the left-hand fork of said run, N. 10 W. 44 pos., crossing the forks and passing a deer lick to a white oak and black oak, and leaving N. 52 W. 290 pos. to two white oaks, corner to Young's survey, and leaving with Brown's S. 18 W. 760 pos. to hickory and black gum by branch, S. 58 W. 274 poles

to two hickories and white oak, and leaving S. 25 E. 114 poles to chestnut pointers on ridge, S. 40 W. 168 pos. to three tall black oaks,
S. 80 W. 366 pos. to a black oak, white oak, and hickory;
451 S. 18 W. 415 pos. to two pines by Howard's creek and
pike, corner to and with north; S. 60 E. 40 pos. to pine and white oak, corner to and with Erwin; N. 89 E. 80 pos. to two sugars by pike, corner to and with Dickson; S. 88 E. 182 pos. to pine and white oak, N. 72 E. 390 poles to black oak and hickory in draft, S. 13 E. 18 poles to poplar, and leaving N. 83 E. 80 poles to three hickories, corner to and with Mrs. Bedford; N. 70 E. 88 poles to two dogwoods and cherry at foot of hill, S. 59 E. 68 poles to ironwood and ash sapling, S. 87½ E. 30 poles to a fallen double white oak at head of pond, N. 82 E. 62 poles to a stake by road, S. 23 E. 61 poles to three thorn bushes, cherry, and locust by said creek, and down same and crossing obliquely S. 40 W. 87 poles to white oak on south side, and down S. 88 W. 60 poles, N. 73 W. 60 pos. to white and chestnut oak on bank, and leaving and with Mrs. Copeland, S. 64 W. 130 poles to a white oak by old road, west 56 poles to a stake, corner to and with Robert Dickson; S. 84 E. 30 poles to a pine, corner to 380 acres of Banks, now Calwell's, and with S. 15 E. 40 poles to sugar by branch, N. 75 W. 26 poles to white oak on narrow ridge, S. 55 W. 21 pos. to a red oak sapling, S. 25 W. 32 pos. to two white oaks, S. 75 W. 98 poles to two white oaks by a drain, S. 12 W. 24 poles to a white oak sapling, S. 12 E. 18 poles to two white oaks, S. 17 E. 44 poles to a pine, S. 8 E. 18 poles to a pine and white oak, S. 30 E. 22 poles to pine and white oak, S. 35 E. 150 poles to pine and white oak, S. 70 E. 5 poles to two white oaks, black oak, and locust, corner to Creigh tract, and with N. 52 E. 400 poles to chestnut and black oak on a ridge, N. 63 E. 770 poles to pointers, corner to and with Edwards; N. 44 W. 225 poles to the beginning, being the same land that was conveyed by John Bowyer Calwell and others to William H. Macfarland by deed dated November 22, 1853, and recorded in Greenbrier county, in Deed Book No. 21, pages 605 to 608; also a tract of twenty-eight hundred acres lying on or near the line of the Chesapeake & Ohio railway, in Alleghany county, Virginia,
and is the same tract which formerly belonged to one Hoke;
452 but it is expressly understood that the following lots are
excepted from the operation of this conveyance, to wit: First, the family cemetery of the former proprietors of the White Sulphur Springs, containing about one-fourth of an acre; second, the lot on which the Methodist church is located and which had been conveyed to trustees for said church under a decree made in the suit aforesaid, and, third, the lot sold to the Right Reverend George W. Peterkin for the use of the Episcopal church under a decree in said suit by the court aforesaid, and for which no deed has yet been made; and it is further expressly understood and agreed that a lien is retained on all the property hereby conveyed to secure payment of and until the five several bonds of $61,290 for the purchase-money aforesaid are fully paid and discharged; to have and to hold the aforesaid real estate and premises, with all the right, title, and interest of the

said White Sulphur Springs Company, and all persons claiming by, through, or under said company unto the said William A. Stuart, his heirs and assigns forever.

Witness the following signature and seal:

A. C. SNYDER, [SEAL.]
Special Com'r.

STATE OF WEST VIRGINIA, }
County of Greenbrier, } *ss:*

I, Mark L. Spotts, a notary public for the county aforesaid, do certify that A. C. Snyder, special commissioner, whose name is signed to the foregoing deed, bearing date on the 17th day of March, 1882, has this day acknowledged the same before me in my said county. Given under my hand this 17th day of March, 1882.

MARK L. SPOTTS,
Notary Public.

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT CLERK'S OFFICE,
April 10, 1882.

This deed was on this day presented in this office, and, with the certificate endorsed thereon, it is admitted to record.

Teste: MARK L. SPOTTS, *Clk.*

453 A copy.
Teste: CHAS. B. BUTLER, *Clk.*

Fee for this copy, $2.50.

C. B. B.

Judgment Liens.

GREENBRIER COUNTY COURT CLERK'S OFFICE, WEST VIRGINIA.

Names of parties.	Am't j'dgm't.	Value of specific property recovered.	Date of j'dgm't.	Court in which it was ren'd.	Date of docketing.
F. Harlow, L. George, T. Argabright, partners in business under the firm — and style of Harlow & Argabright, against The Greenbrier White Sulphur Sp'gs Company.	Judgment rendered for $173.68 cts., with interest thereon from the 10th day of Feb'y, 1883, until p'd, and the costs, $1.55 cents.	.....	1883. February 10th.	J'dgm't by J. W. Arbuckle, mayor of Lewisburg & *ex officio* justice of Greenbrier county, West Virginia, on the 10th day of February, 1883.	1883. February 16th.

A true copy from the judgment-lien docket on file in this office.

(Signed) CHAS. B. BUSTER,
Clerk of —.

RICHMOND, VA., —— —, 188–.

G. White Sulphur Springs in account with Geo. P. Stacy, dealer in all kinds of fine furniture, 1205 Main street and 7 & 9 12th street.

	1882.				
Ap'l	14.	To disc't & ex. on 1,957.07, 4 mos. --	51 20		
	"	To disc't & ex. on 1,957.07, 5 mos. --	60 98		
June	20.	To disc't & ex. on 3,700.00, 4 mos. --	74 00		
June	13.	By d'ft, 3 mos., on them ----------			959 40
	"	" note, 60 days----------			1,000 00
454		To d'ft returned ----------	959 40		
	Sept.	19. To note returned----------	1,957 07		
	"	29. To note " ----------	480 60		
		Balance due G. P. S. -- -- ----------			1,623 85
			3,583 25		3,583 25
Sept.	29.	To bal. due G. P. S. -- -- ----------	1,623 85		

Principal---------- $

Interest from—
To—

Costs ----------
Commission -----
D. bond ---- ----

——
Amount---- $

The Commonwealth of Virginia to the sheriff of Augusta county, Greeting:

We command you that of the goods and chattels of Wm. A. Stuart, Geo. L. Peyton, Johnson N. Camden, & William P. Thompson, and of the goods and chattels of H. M. Matthews in the hands of A. B. Lightner sh'ff, adm'r, to be administered, late in your bailiwick, you cause to be made the sum of ($27,519.30) twenty-seven thousand five hundred and nineteen $\frac{30}{100}$ dollars, with interest, 22,976.20 to be computed, *after* the rate of 5 per centum per annum, from the 1st day of June, 1885, till payment, and charges of protest, $—, which H. M. Bell, receiver in the cause of Effinger *v.* Stuart and *als.*, late before the judge of our circuit court of Augusta county, have recovered against them, as well for a certain decree as for interest thereon. Also $598.95 dollars and — cents, which to the said Bell, receiver in the same court, were adjudged for his costs by him about his suit in that behalf expended whereof the said Stuart and *als.* convict, as appears to us of record; and that you have the same at the clerk's office of our said court, at the court-house, on the first Monday of Jan'y next, to render unto the said Bell, receiver of the decree, interest, and costs aforesaid; and have then — there this writ.

455 Witness J. N. Ryan, clerk of our said court, at the court-house, the 26th day of Nov., 1885, and in the 110th year of the Commonwealth.

J. N. RYAN, *Clerk.*

Copy.
Teste:

B. F. TERRY, *D. C.*

[Endorsed:] Bell, receiver, *vs.* Stuart and *als. Fi fa.* To January rules, 1886. No property known to me unencumbered. T. R. N. Speck, S. A. C.

Copy.
Teste: B. F. TERRY, *D. C.*

$100 paid by Stuart on ac. of costs paid Com'r Kinney and $25.00 paid by Camden to same on same ac. Credit this execution by one-sixth of debt, interest, and costs, including the $25.00 costs paid by Camden & W. P. Thompson.

Teste: J. N. RYAN, *Clk.*

Copy.
Teste: B. F. TERRY, *D. C.*

GAY and Others
vs.
WHITE & Others. } Statement.

Stuart has paid—

Quarrier's fee	$5,000 00	
" com's	1,000 00	
		$6,000 00

456 Camden has paid—

Mathews	$1,250 00	
Moore	1,250 00	
Snyder	1,000 00	
Echolls	1,000 00	
Gordon	1,000 00	
		$5,500 00

Unpaid.

Advertisements.

Harlow & Argabright	$142 00	
Same	25 00	
H. E. Shaft (Journal of Com.)	153 00	
R. F. B. (Richmond State)	355 60	
Courier-Journal Co.	120 20	
Abell & Co. (Balto. Sun)	210 60	
John Hillyer (Wall St. Journal)	316 00	
J. E. Pemberton (Gazette)	25 00	
R. P. Warren (Courier)	25 00	
		$1,372 40

Auctioneer.

J. W. Dike	150 00

Dividends.

Dr. A. N. Wellford	$1,051 38	
Alex'r F. Mathews	1,051 38	
W. A. Stuart, assignee of Singleton mortgage	18,924 84	
		$21,027 60
		$34,050 00

Recapitulation.

Advertisement	$1,372 40	Draft on Camden	$1,812 58
Auctioneer	150 00	" " Stuart	1,812 58
Dividends to M. & W.	2,102 76		
	$3,625 16		$3,625 16

Forwarded by Wm. A. Quarrier.
A copy.
Teste:

457 *Condensed Statement of Insurance, Greenbrier White Sulphur Sp'gs.*

Total prems. on	135,000	on hotel building	3,586 68	
" " "	33,500	" " furniture	880 61	
" " "	41,171	" cottages	845 35	
" " "	14,000	" club-ho., &c.	234 00	
" " "	1,500	" Dry creek furniture	15 00	
" " "	2,000	" Lister ho. furniture	40 00	
" " "	3,000	" Beauregard ho.	6 25	
" " "	1,500	" bath-house	75	
				$5,608 64

Credit.

Return prems. on cancelled policies	27 30	
Note paid in June, 1882	801 34	
Cash " Sept., 1882	500 00	
" " " "	178 65	
		$1,507 29
		$4,101 35

Earned prems. to Dec. 1st, 1882, as per statement herewith	$2,260 44
Less above credits	1,507 29
Amount due from White S. S. Co. to Dec. 1st	753 15
" " " Mr. Phoebus from " 1st	3,348 20
	$4,101 35

Am't due from W. S. S. Co., as above		$753 15
Interest, 7 %, 4 months	$17 57	
Int. on $4,101.35 past due	18 43	
		36 00
		$789 15
Amount due from Mr. Phoebus, as above		3,348 20
Interest, 7 %, 4 months		78 12
		$3,436 32

458 CLARKSBURG, WEST VA., *April* 22, 1887.

W. J. Leake, Esq., Richmond, Va.

DEAR SIR: Inclosed please find copies of decrees entered in case of Gay *et al. vs.* White Sulphur Springs Co. *et al.*, which I send by request of Capt. A. F. Mathews, of Lewisburg, West Va. In case of Hodges Bro-. *et al. vs.* White Sulphur Springs Co. *et al.* Jasper Y. Moore was appointed receiver to take charge of "2-acre tract," &c., &c., on 30th May, 1883.

Yours truly, (Signed) JASPER Y. MOORE.

EXHIBIT J. W. M. No. 2. Filed by W. A. Stuart before com'r.

"BANK OF LEWISBURG,
LEWISBURG, W. VA., *Jan'y* 6, 1887.

W. A. Stuart, Esq.

DEAR SIR: Your letter of 1st inst. is rec'd, and at first I feared I would not be able to furnish you with the information asked for, as a good many of my original calculation- in the W. S. matter were borrowed from time to time by different persons and never returned. Upon a careful search through such as I have left, I think I have found the original draft of the statement you want, and I send you a copy herewith, and hope it may answer your purpose. When I made the statement I had before me your contract with Camden, Peyton, &c., and also the contract with Mrs. Gay's trustee. I could, no doubt, if I had those contracts now, make a better expla-
459 nation of the statement than I can from memory. My recollection of the facts substantially is the same as you state them. If I am not mistaken, they agreed to take the property and pay you the full am't of the debts from classes 1 to 8, inclusive, except class 7, and, in addition, allow you 25 % on debts of class 9 (deed of 1842), owned by you, an $5,000.00 in addition, making the total $390,942.89. The two Singleton bonds which you did not own you were to secure, and the whole of that debt was included in the sum, $290,170.38, stated as owned by you. Of this am't you agreed to carry $200,000 to 1900, but interest to be paid annually, at 6½ %. The remaining 90,170.38 was to (be) paid as per statement. The am't owned by others than yourself, viz., $100,772.51, the Co. was to pay as the several claims would have to be paid under terms of the sale at which you purchased. That was somewhat modified as to the Gay debt by the Co. agreeing to make the payment on that debt

according to your contract with Mrs. Gay's trustee. I do not know if I make myself perfectly — that, but if — anything you do not understand, I will try to explain better if you will indicate what it is. As to the cash payment that was disbursed by Judge Snyder, and if you wish, I think I can get a copy of his report. My understanding is, though, that all of it went to pay costs.

If my deposition will be of any service to you, I will go to Richmond and give it, as you request, but could not go on 10th, as you suggest. I might meet you there about 13th, or, if it suited as well, on 20th. It suits me very badly to be away from here the first of the week. If you wish me to go, please try and let me know a couple of days beforehand, so that I can make my arrangements. I neglected to say that as regards the consideration named in the deed I know nothing. I have no recollection of ever having seen the deed.

I enclose statement of interest on bank debt to Feb'y 1, as you request.

Yours very truly, (Signed) J. W. MATHEWS.

460 STATE OF VIRGINIA, } *To wit:*
County of Russell, }

I, W. A. Stuart, of said county, do swear, to the best of my knowledge, information, and belief, no bonds were ever issued under the mortgage executed by the Greenbrier White Sulphur Springs Company upon two acres of land near the depot at the Greenbrier White Sulphur Springs in West Virginia, and that if such bonds had been issued I would surely have heard of it.

(Signed) W. A. STUART.

MARCH 17, 1887.

Sworn to and subscribed before me this 17th day of March, 1887.

(Signed) H. C. STUART,
Notary Public for the County of Russell, State of Virginia.

Deed Recorded in Book No. 34, *at page* 129, *&c.*

Examined.—M. L. Spotts, clerk.

This deed, made this 24th day of February, A. D. 1883, between the Greenbrier White Sulphur Springs Company, a corporation duly organized under the laws of the State of West Virginia, party of the first part, and Thomas Tabb, of the county of Elizabeth City, State of Virginia, party of the second part, witnesseth:

That whereas the party of the first part, in pursuance of a resolution of its directors unanimously adopted in general meeting assembled on the 18th day of January, A. D. 1883, resolved to issue the bonds of the said company, the said party of the first part, for a sum not exceeding the sum of twenty-five thousand dollars, to run not less than ten years, bearing interest at the rate of six per cent. per annum, payable annually, and the said bonds so issued to be secured by deed of trust upon the lot or parcel of land
461 hereafter mentioned and described, with certain appurtenances

to the same belonging or attached, as directed by the aforesaid resolution of the directors of the said company;

And whereas the said party of the first part, in obedience to the said resolution, has issued its fifty bonds, each for the sum of five hundred dollars, of even date with this deed, twenty-five of said bonds payable ten years after date and the remaining twenty-five fifteen years from date, with interest from date, payable annually, at the rate of six per cent. per annum, but redeemable at the pleasure of the company after ten years, which said bonds upon their face bear evidence that they are issued in pursuance of the said resolution of the directors in general meeting assembled on the 18th day of January, 1883, and secured by the lien of this deed (both principal and interest):

Now, in consideration of the premises and of the sum of five dollars paid by the said party of the second part at and before the execution of this deed, the said party of the first part doth hereby grant and convey unto the said Thomas Tabb, trustee, party of the second part, with general warranty, all that certain lot or parcel of land containing two acres, being a part of the grounds of the White Sulphur Springs, located in Greenbrier county, State of West Virginia, near the White Sulphur Springs depot of the Chesapeake & Ohio Railway Company, and bounded as follows: On the south by the James river and Kanawha turnpike; east, by the road leading from the railroad depot into the grounds of the White Sulphur Springs, and north and west by the grounds of the White Sulphur Springs, being the same two acres of land referred to in the deed of W. A. Stuart and wife to the Greenbrier White Sulphur Springs Company, bearing date March 17th, 1882, and the deed of trust from the Greenbrier White Sulphur Springs Company to Isaac H. Carrington and William W. Gordon, trustees, bearing date 6th day of April, 1882, both of said deeds being duly recorded, and to which reference is here
462 again made (the said two acres of land being free from the liens of the said deeds), together with all the buildings and improvements which may hereafter be erected upon the said lot or parcel of land and all the appurtenances to the same attached or belonging, including the right to the use of the waters of the White Sulphur Springs Company for drinking purposes and the use and privilege of the grounds of said company.

It is expressly understood by all the parties to this indenture that among the rights, privileges, and appurtenances belonging and attached to the said property hereby conveyed is the right to the free use of the waters of the springs company for drinking purposes to all persons who may at any time hereafter become the guests, visitors, or inmates of any hotel which may hereafter at any time be erected on the said grounds hereby conveyed, together with the free use of the grounds of said company to such person or persons.

In trust to secure the payment of the fifty bonds aforesaid of $500 each, aggregating $25,000, and of all the interest thereon; and it is expressly stipulated that the security of this deed shall under all circumstances enure equally to all the bonds hereby secured, without preference to one over another by reason of the date of its prior

issue or maturity; and it is further stipulated that until default is made in the payment of the said bonds or of any part of them, or any part of the interest thereon, the party of the first part is to remain in undisturbed possession of the said property hereby conveyed, and stipulates to pay all the taxes and assessments on the same, to pay the premium on fire-insurance policies to a reasonable amount upon any buildings which may be erected on said premises, and to hold the said policies as a further security to secure the payment of the aforesaid bonds.

But if default is made in the payment of any part of the bonds hereby secured, or in the payment of the interest thereon, then, whenever requested so to do by the holder or holders of said
463 bonds to the amount of ten thousand dollars, the said party of the second part shall sell the property hereby conveyed, together with the rights, privileges, and appurtenances to the same belonging, at public auction, on the premises, after giving sixty days' previous notice of the time, place, and terms of sale by publication twice a week for said sixty days in *on* (one) or more newspapers published in the cities of Wheeling, Richmond, Cincinnati, Baltimore, and New York, upon the following terms: One-fourth in cash and the balance upon a credit of one, two, and three years, with interest from the day of sale, the said deferred payments to be secured by deed of trust on the premises, and reasonable insurance upon the buildings at the cost of the purchaser. From the proceeds of sale the said party of the second part shall pay all the costs, charges, and expenses of said sale; he shall then pay all the interest in arrears and unpaid on said bonds, and the balance shall be applied equally to the payment and discharge of the bonds aforesaid, and the surplus shall be paid to the said party of the first part.

In witness whereof the said The Greenbrier White Sulphur Springs Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its president, pursuant to the aforesaid resolution of the directors of the 18th January, 1883, the day and year first above written.

[SEAL.] (Signed) THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY,
By HENRY M. MATHEWS, *President.*

THE STATE OF WEST VIRGINIA, *Greenbrier County,* } *To wit:*

Henry M. Mathews, whose name is signed to the foregoing deed, bearing date on the 24th day of February, 1883, as the president of the Greenbrier White Sulphur Springs Company, this day personally appeared before me, Mark L. Spotts, a notary public in and for the said county, in this my county, and on behalf of the said
464 company acknowledged the same.

Given under my hand this 7th day of March, 1883.

(Signed) MARK L. SPOTTS,
Notary Public.

Interlineation, "bearing date on this 24th day of Feb'y, 1883," was made before this deed was presented for record.

(Signed) M. L. SPOTTS, *N. P.*

THE STATE OF WEST VIRGINIA:

GREENBRIER COUNTY COURT,
CLERK'S OFFICE, *March 7th,* 1883.

This trust deed, dated the 24th day of February, 1883, from the Greenbrier White Sulphur Springs Company to Thomas Tabb, trustee, embracing certain real estate, being part of the White Sulphur Springs property, in trust for certain purposes, was on this day presented in this office, and, with the certificate endorsed thereon, it is at 12 o'clock m. admitted to record.

Teste:

(Signed) MARK L. SPOTTS, *Clerk.*

Statement of Decree of C't Court of Greenbrier Co., in Suit of Bank of Lewisburg vs. W. A. Stuart.

Am't of decree as of April 17, '83	30,678 84
Costs	92 64
Int. to July 15, '85	4,126 32
	34,897 80

1885. Cr.

July 14. By am't paid by W. A. Stuart	4,992 05
	29,905 75
Int. to Feb'y 1st, 1887	2,781 24
	32,686 99

Cr.

By am't paid by W. A. Stuart	2,781 24
Bal. as of Feb'y 1st, 1887	29,905 75

(Signed) J. M. MATHEWS, *Cash.*

465 WEST VIRGINIA:

At a Circuit Court Held for Greenbrier County, at the Courthouse thereof, on the 15th Day of November, 1884.

THE BANK OF LEWISBURG
vs.
WILLIAM A. STUART and *als.*

This cause came on this the 15th day of November, 1884, to be reheard pursuant to the order therein entered at the June term, 1884, upon the papers formerly read and the arguments of counsel. Upon consideration whereof the court is of opinion and decides

that said demurrer is not well taken and must be overruled; and it is therefore adjudged, ordered, and decreed that said demurrer be, and it is hereby, overruled, and a rule to answer, returnable here forthwith, is hereby awarded against the said defendant, Wm. A. Stuart.

A copy.
Teste:
(Signed) JONATHAN MAYS, *Clk.*

WEST VIRGINIA:

At a Circuit Court Held for Greenbrier County, at the Court-house thereof, on the 1st Day of December, 1886.

THE BANK OF LEWISBURG
vs.
W. A. STUART & *als.*

The defendant W. A. Stuart, by his counsel, having heretofore appeared in response to the rule to answer awarded against him on a previous day of this term, and having then, by consent of the plaintiff, taken until to-day to file his answer, and he now still failing to answer the plaintiff's bill or to plead thereto, the said bill as to him is taken for confessed.

And the cause coming on this the 1st day of December to be again heard upon the papers formerly read, the bill taken for confessed as aforesaid and the arguments of counsel.

466 Upon consideration whereof the court is of opinion and decides that there is no error in the decree pronounced at the April term, 1883, or in any of the proceedings in this cause, and it is therefore adjudged, ordered, and decreed that said decree as rendered be, and it is hereby, in all respects confirmed; and the said decree having been rendered against the said W. A. Stuart, as a non-resident, and he having now appeared and made defense, it is further adjudged, ordered, and decreed that said decree be now made a personal decree against him and be modified accordingly, and that the plaintiff recover from the said W. A. Stuart its costs in this rehearing.

And the bond required by the said decree at the April term, 1883, to be given by the plaintiff, or some one for it, before any sale should be made of the property therein decreed to be sold is now dispensed with.

A copy.
Teste:
(Signed) JONATHAN MAYS, *Clk.*

EXHIBIT J. W. M. No. 1. Filed by W. A. Stuart.

Amount to be Paid by Greenbrier White Sulph. Springs Company to W. A. Stuart, as per Agreement, for the White Sulphur Property.

Amount of debts of class No. 1, or Singleton debt			151,273 00
" " " " 2			9,266 30
" " " " 3			8,120 85
" " " " 4			4,005 02
" " " " 5			24,312 51
" " " " 6 (Erskine debt)			141,305 60
" " " " 8			2,965 16
			341,248 44
467 Add 25 % of class No. 9	44,694 45		
And in addition	5,000		
			49,694 45
Total amount			$390,942 89

The above is the amount, as I understood, which Mr. Stuart was to receive from the Greenbrier W. S. Springs Co. for the property. The calculation was made to March 31, 1880, and at that time Mr. Stuart owned of the above debts $290,170.38, and there was owned by others $100,772.51. The payments to Mr. Stuart were to be made as per statement herewith.

(Signed) J. W. MATHEWS.

Annual Payments to be Made to W. A. Stuart by The Greenbrier W. S. Springs Co. on Acc't of the Purchase of the White Sulph. Springs Property.

September 1st, 1880.

Interest on $90,170.38 from March 31 to Sep. 1, 6 %	2,254 26	
Interest on 200,000 from March 31 to Sep. 1, 6½	5,416 67	
		7,670 93

September 1st, 1881.

Int. for 1 year on $90,170.38, 6 %	5,410 22	
" " " " " 200,000.00, 6½ %	13,000	
Payment on principal	5,000	
		23,410 22

September 1st, 1882.

Int. for 1 year on $85,170.38, 6 %	5,110 22	
" " " " " 200,000.00, 6½ %	13,000	
Payment on principal	5,000	
		23,110 22

468 September 1st, 1883.

Int. for 1 year on $80,170.38, 6 %		4,810 22	
" " " " " 200,000.00, 6½ %		13,000	
Payment on principal		5,000	
		22,810 22	
M'ch 31. Debts between classes Nos. 1 & 6, owned by others than W. A. Stuart	14,443 70		
3 years' interest	2,599 86		
		17,043 56	
5⅓ % class No. 6 to be applied to detached coupons		8,892 83	
			48,746 61

September 1st, 1884.

Int. for 1 year on $75,170.38, 6 %		4,510 22	
" " " " " 200,000, 6½		13,000	
M'ch 31. Bal. of class No. 6, held by others than W. A. Stuart, to be paid out of installment of 43⅓ %		43,738 95	
			61,249 17

$9,957.27 of the Gay debt becomes capitalized this year, and is entitled to annual interest hereafter.

September 1st, 1885.

Int. for 1 year on $75,170.38, 6 %		4,510 22	
" " " " " 200,000.00, 6½ %		13,000	
Payment on principal		15,042 59	
M'ch 31. Int. for 1 year on $9,957.27 of Gay debt		597 43	
			33,150 24
469 Interest for 1 year on $60,129.79, 6 %		3,607 67	
" " " " " 200,000.00, 6½ %		13,000	
Payment on principal		20,042 60	
M'ch 31. Int. for 1 year on Gay debt, $42,019.26		2,521 15	
			39,171 42

September 1st, 1887.

Interest for 1 year on $40,085.19, 6 %		2,405 11	
" " " " " 200,000.00, 6½ %		13,000	
Payment on principal		20,042 59	
M'ch 31. Int. for 1 year on Gay debt, $42,019.26		2,521 15	
			37,968 85

September 1st, 1888.

Interest for 1 year on $20,042.60, 6 %	1,202 55	
" " " " " 200,000.00, 6½ %	13,000	
Payment on principal	20,042 60	
M'ch 31. Int. for 1 year on Gay debt, $42,019.26	2,521 15	
		36,766 30

September 1st, 1889.

Interest for 1 year on $200,000.00, 6½ %	13,000	
" " " " " Gay debt	2,521 15	
		15,521 15

September 1st, 1890.

Interest for 1 year on $200,000.00, 6½ %	13,000	
M'ch 31. Interest for 1 year on Gay debt	2,521 15	
Principal of Gay debt	42,019 26	
		57,540 41

After 1890 interest annually on $200,000, at 6½ %, up to and including 1900, when, I think, the principal falls due.

470 And on another day, to wit, on the 29th day of June, 1887, the following exceptions were filed in the clerk's office of said court; which said exceptions are in words and figures following, to wit:

In the United States Circuit Court for the District of West Virginia, June Term, 1887.

STUART, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS Co. *et als.*

and

WM. KNABE & Co., Who Sue, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS Co. *et als.*

In Equity.

The Merchants' National Bank at Richmond, Virginia, excepts to the report made by Wm. J. Leake, to whom these causes were referred under an order of this court made and entered June 26th, 1886, which report is dated June 1st, 1887, and filed June 10th, 1887—

For this, to wit: That the said Commissioner Leake has reported that the bonds of the defendant company, 50 in all, and numbered 231 to 250, inclusive, and 171 to 200, inclusive, held as collateral for the said company's note for $10,000, *as* not a valid lien upon the property of the said company under the deed made by said company to W. W. Gordon and Isaac H. Carrington, trustees, and dated April 6th, 1883, in the bills and proceedings mentioned, whereas

said commissioner should have reported said bonds as valid and a subsisting lien under the deed aforesaid.

(Signed) CHAS. S. STRINGFELLOW,
LEIGH R. PAGE,
Solicitors for the Merchants' National Bank of Richmond, Va.

471 And on the same day, to wit, on the 29th day of June, 1887, the following exceptions were filed in the office of the clerk of said court:

In the United States Circuit Court for the District of West Virginia, June Term, 1887.

STUART, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et als.*

and

WM. KNABE & CO., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et als.*

In Equity.

Thos. Branch & Co. except to the report mad*y* by Wm. J. Leake, to whom these causes were referred under an order of this court made and entered June 26th, 1886, which report is dated June 1st, 1887, and filed June 10th, 1887—

For this, to wit: That the said Commissioner Leake has reported that the bonds of the defendant company, 60 in number, and numbered from 201 to 230, inclusive, and 141 to 170, inclusive, held as collateral security for the said defendant company's notes for $20,000, are not a valid lien on the property of the said company under the trust deed made by said company to W. W. Gordon and Isaac H. Carrington, trustees, and dated April 6th, 1883, in the bills and proceedings mentioned, whereas the said commissioner should have reported said bonds as valid and a subsisting lien under the deed aforesaid.

(Signed) LEIGH R. PAGE,
CHAS. S. STRINGFELLOW,
Solicitors for Thos. Branch & Co.

472 And on another day, to wit, on the 5th day of July, 1887, the following exceptions were filed in the office of the clerk of said court:

WILLIAM A. STUART and Others, Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others, Defendants.

and

WM. KNARBE & CO., Who Sue, &c., Complainants,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others, Defendants.

In the Circuit Court of the United States for the District of West Virginia.

William A. Stuart a plaintiff in the first and a defendant in the second of the above-entitled causes, takes the following exceptions to the report of Special Commissioner W. J. Leake, filed therein on the 10th day of June, 1887:

1. He excepts to said report, because the commissioner reports that he (said Stuart) still owes, on account of his subscription for 375 shares of the capital stock of the Greenbrier White Sulphur Springs Company, a balance of $18,937.08, with interest thereon from 30th December, 1880, whereas said commissioner ought to have reported that the amount of said capital stock subscribed for by said Stuart, as also the amounts thereof subscribed for by the other stockholers (with the exception of H. M. Mathews), were fully paid for. In organizing the corporation, which was to acquire the property they owned, Stuart and his associates had a right to make their own terms for it.

Not-ing is better settled than that, unless the transaction is successfully impeached for fraud, courts will treat as a payment
473 for stock that which the corporation has agreed shall be a payment, and this not only as to the corporation itself, but as to the creditors of the corporation also.

In the absence of proof of a fraudulent intent there is no principle of public policy or of law which condemns an agreement between parties forming a corporation by which the capital stock, or any portion of it, is to be represented by property contributed by themselves at a valuation agreed on between them. To invalidate it the corporate creditor must prove not only "that the property was overvalued, and unreasonably overvalued," but "that the overvaluation was intentional and consequently fraudulent."

See Cook on the Law of Stock and Stockholders, sections 34 and 44, and cases there cited, especially the case of Phelan *v.* Hazard, 5th (not 3rd) Dillon, 45, in which the question is carefully considered and the authorities bearing on it thoroughly reviewed by Judge Dillon, Judge Treat concurring fully in his views.

Here it is not proved, or even alleged, that the $150,000 of stock was fraudulently issued as paid-up stock. Commissioner Leake seems to have come to the conclusion that it is not to be regarded as fully paid, because he thinks it has been shown by a critical exami-

nation of the books of the company, made by the witness Boudar as an expert accountant, that instead of the estimated profit of $56,000 from the season of 1880 a profit of $4,251.68 only was actually realized. The commissioner appears to have fallen into the error of supposing that the $56,000 of estimated profit was treated, in the organization of the company, merely as so much money actually paid in by the stockholders on account of their subscriptions, when, in truth, in determining whether certificates for paid-up shares should be issued it was referred to and treated by the stockholders not merely as so much money contributed by them,
474 but chiefly as evidence furnished by the experience of the season of 1880 of the productive capacity and real value of the property in its then condition.

It is therefore not very important to show that Boudar's statement, made upon the theory that — no part of the profits of 1880 of which the corporation is not proved to have received the full benefit, is, even upon that theory, erroneous and grossly unjust to the stockholders, but an examination of those statements will show such to be the case:

1. Boudar (see statement "Boudar No. 2," page 1) deducts from the profits of 1880 an installment of purchase-money paid by the associates to Stuart on 1st September, 1880, amounting to $7,670.93. It cannot be proper to make this deduction. The amount was paid out of the profits of the season on account of the purchase-money for the property which was turned over to the corporation when it was organized.

2. He deducts as "balance due and unpaid on purchase-money for 1880" the sum of $13,879 07, although none of the purchase-money or interest thereon was due or demandable for a year after the installment of $7,670.93 was paid, on the 1st September, 1880.

3. He deducts $2,000 as salary to George L. Peyton, eight months, although Peyton proved in the very deposition upon which he was relying for the correctness of his conclusions as to the amounts proper to be deducted from the estimated profits of 1880 that $1,267.47 had been paid him from time to time during the season of 1880, so that only $792.63 could possibly be regarded as due on account of his salary at the time of the organization of the company.

4. The deductions made by him (see page 2 of same statement) on account of the supposed depreciation in value of the personal property during the season of 1880, amounting together to upwards of $12,500, are grossly excessive. It cannot be that the new furniture,
costing upwards of $45,000, depreciated in value in a single
475 season as much as 12½ per cent. upon its cost, nor that the furniture bought from George L. Peyton & Co., costing $35,000, much of which was not used during the season, depreciated in value as much as 20 per cent. upon that amount.

The spirit in which this investigation was conducted is manifested by the fact that Boudar states that (see "Boudar No. 2," page 4) the payment for freight, &c., on the new furniture bought by the associates and turned over to the corporation on its organization are properly to be regarded as items of expense, and should have been

charged to that account so as to reduce the estimate of profits, giving as his reason for so stating that there was "no market at the springs for such a large lot of furniture should a sale at any time be desirable," being apparently unable to see that if the corporation had itself been the original purchaser of the furniture it would have had to pay the freight charges upon it; and that therefore, in having it delivered to it by the associates upon the premises, it got the benefit of the payments that had been made by them for its transportation to that place.

Other errors in addition to those above referred to would doubtless be made apparent by an examination of Boudar's statements of the accounts in connection with the books of the company. It is difficult, if not impossible, to understand his statements as they have been made out. The two statements in "Boudar No. 2" seem in their details to be irreconcilable, yet the same result is arrived at in each—how, it will require the services of an expert not less skillful than Boudar himself to explain. Enough, however, appears upon the face of Boudar's statements to show that they are grossly inaccurate and erroneous, even if it were proper to deduct from the profits of 1880 everthing of which the corporation did not receive the full benefit; but, if it were conceded that his statements are correct, and that the profits of 1880 ought properly to be esti-
476 mated at $4,251.68 only, it would by no means follow that exceptant, or any other stockholder (except H. M. Mathews, to the extent of one thousand dollars), should be charged with any part of his subscription as remaining unpaid. At the time that the corporation was organized, exceptant and his associates had for nearly a year been bestowing their time and services in acquiring, at their own risk, and managing and improving, upon their own responsibility and at their own cost, the property that they turned over to it.

The contract of 30th January, 1880, under which they held it, they justly considered to be extremely valuable, exceptant being required by it to convey the property to their use at a stipulated price and upon much longer credits than he was himself allowed as purchaser under the decree, he agreeing to allow a credit of twenty years upon two hundred thousand dollars of the purchase-money.

Under this contract they had taken possession of the property, and tested its productive capacity by operating it during the spring's season of 1880, when, as they honestly believed, a profit of not less than fifty-six thousand dollars had been realized, notwithstanding the disadvantages of conducting repairs in the midst of the season and the incomplete condition of the improvements they were erecting on the property. They had paid up in cash on account of their subscriptions to the capital stock of the corporation seventy thousand dollars, less one thousand, which one of the stockholders owed and agreed to pay, and had paid $7,670.95 (which was all that had become due and payable) on account of the purchase-money to which exceptant was entitled under the agreement of 30 January, 1880.

When, under these circumstances, they came to organize the corporation, they determined that certificates for full-paid shares should

be issued to themselves for the $150,000 of capital stock that had been subscribed for by them, the corporation taking the prop-
477 erty, real and personal, subject to the then existing indebtedness, and at the same time determined to increase the capital stock from $150,000 to $300,000, the certificates for the increased amount to be sold at par, being unwilling for new subscribers to come in on any other basis, and having good reason to believe that the $150,000 of additional stock would be subscribed for by Huntington and other capitalists.

In arriving at the determination to have certificates for full-paid shares issued to themselves, exceptant and his associates considered that they obtained no more than a fair equivalent for the property turned over to the corporation under the circumstances above set forth, and in acting upon that determination and causing the certificates to be so issued they were, as exceptant is advised, guilty of no impropriety and did no injustice to any one.

They were individually liable for every dollar of indebtedness that had been contracted subsequently to the purchase of the property by exceptant under the decree of sale in the Gay suit—a liability from which they were not relieved by the assumption of it by the corporation, as has been shown in the case of George L. Peyton & Co. for the furniture sold them, and by them turned over to the corporation, suit having been brought individually against them in the circuit court of Augusta county, Virginia, subsequently to the appointment of the receiver in this case, and a decree rendered against them on the 10th day of June, 1885, under which exceptant has paid (including the interest which has accrued thereon) upwards of twenty thousand dollars and Camden upwards of ten thousand, the amounts so paid being reported by Commissioner Leake as unsecured debts due them respectively from the corporation.

The creditors of the corporation whose debts were contracted prior to its organization, if any such creditors now remain, have therefore no right to complain of the issue of the certificates for full-paid shares of stock.

478 Nor have the creditors, whose debts have been contracted subsequently to the organization of the corporation, any right to complain of the issue of said certificates.

Independently of the fact that they must be presumed to have known when they gave credit to the corporation that these shares of stock had been issued, and were claimed and held as having been fully paid for, it appears that the corporation was given an interest in the property which is admitted by the unsecured creditors to be of very great value to them. The interest thus given arose in this way: Under the contract of 30th January, 1880, between exceptant and his associates, the whole of the real estate was to be subjected to a lien for the purchase-money, payable to exceptant; but in the deed made to the corporation two acres were excepted from that lien, with the privilege of the use of the water from the White Sulphur Spring, independent of any sale for the enforcement of the lien reserved by the deed, with the right to lease or convey such

privilege as attached to the two acres in any lease or conveyance the corporation might make of the same.

It will be strange, indeed, if exceptant, who, under his original contract with his associates, was entitled to insist upon having a lien reserved in his favor upon the two acres, as well as upon the other real estate, for the purchase-money payable to him, and who waived that valuable right in favor of the corporation, can now be required by its creditors, who get the benefit of that waiver, to account for and pay to them so much of his subscription as is not clearly proved to have been paid up in cash.

But even if it could be shown that the property was greatly overvalued, still the issue of the paid-up shares of stock is unassailable by either the corporation itself, or by the creditors of the corporation, otherwise than by litigation and proof (here there is neither) that the overvaluation was intentional and so excessive as to be of itself evidence of fraud.

479 II. He excepts to said report because the commissioner holds that it was incompetent for him to take the one hundred bonds issued under the deed of trust of 6th April, 1882, upon the terms and conditions and under the circumstances that surrounded him when he purchased said bonds and the two hundred and fifty shares of the capital stock of the company, and that he has therefore no right to claim anything under said bonds except the unsecured debts which he used in paying for the same, whereas the commissioner ought to have reported that, by said purchase, exceptant became the lawful owner of said bonds, and is entitled to demand and receive the full amount thereof, and to the benefit of the lien of said trust deed whereby they were secured.

Said deed of trust was executed, and said bonds and shares of stock were sold to exceptant, under and pursuant to an order of the board of directors, ratified by the stockholders of the company, their object being to provide a fund with which the then existing floating debt should be discharged. It was believed by them that the sum of $200,000 would be sufficient to discharge the whole of the floating debt, and leave some surplus to be applied to the improvement of the property; and they determined to raise that amount by selling bonds and stock together—rating the bonds at fifty cents in the dollar and the stock at par—giving the privilege to the stockholders to take said stock and bonds in amounts proportioned to the stock then held by them respectively, the same to be sold on the same terms to outside parties in case any of the stockholders should fail to avail themselves of that privilege.

From a desire to further the interests of the company, which all parties believed would be greatly promoted by a sale of the bonds and shares of stock on the terms indicated, and from that desire only, for he did not consider that it would be otherwise to his interest to purchase them, exceptant agreed to take one-fourth of the

480 amount, John P. Branch agreeing that he, and the parties to whom he had sold some of the shares of stock that had been purchased by him from Lancaster, would take another fourth, and ex-

pressing entire confidence that he would be able to sell the remaining half on the same terms.

Exceptant carried out his agreement in good faith, paying for the bonds and shares of stock thus bought by him fifty thousand dollars in floating debts of the corporation, taken up by him at their face or par value, and he respectfully submits that the commissioner erred in reporting that he is not entitled to these bonds and the benefit of the lien of the trust deed securing them.

If, however, the court shall be of opinion that he is not so entitled and shall overrule this exception, he excepts:

III. To said report, if by naming him as a "present holder" of 250 shares "of additional or second issue of stock," and in stating that "if the court shall be of opinion that" exceptant "is to be held bound for his subscription to the 250 shares of stock taken on April 28th, 1883, then it would be equitable and proper to discharge his liability therefor by applying thereto one-half of the amount, or $25,000 of the debts which he turned in to the company, as set forth in Commissioner Gallaher's report." Commissioner Leake is to be understood as expressing or intimating an opinion that exceptant can in any way or to any extent be held liable upon said 250 shares of stock. Exceptant never did subscribe for said shares. He bought them along with the bonds. Both bonds and stock were to be taken, or neither, and if the contract is set aside as to the bonds, it must, of course, be set aside as to the stock also. It must be ratified *in toto*, or rescinded *in toto*. The court has no power to make a new contract for exceptant, as it would do were it to set aside in part the contract which he entered into. If that contract is ratified, as he claims that it ought to be, he is entitled to both bonds and stock, having paid for them all that he contracted to pay. If it is
481 not ratified, he must be restored to his original position by having the fifty thousand dollars of the debts of the company returned to him.

This exception is taken out of abundant caution merely, exceptant being advised that it may be fairly inferred from the fact that Commissioner Leake elsewhere reports that exceptant is, as an unsecured creditor, entitled to the $50,000 of debts turned over to the company for the bonds and shares of stock, that he was not of opinion that exceptant could be held liable on account of this stock.

IV. He excepts to said report because the commissioner, after holding exceptant bound for the sum of $18,937.08, with interest thereon from 30th December, 1880, as the unpaid portion of his subscription to the capital stock, fails to report that he is entitled to set off against that liability the sum of $20,569.12 paid by him (including interest on his payment) under the decree rendered against him, Camden, and others in favor of H. M. Bell, receiver, stating merely that exceptant "claims" that it is to be so set off.

The debt for which the decree referred to was rendered was the balance due for the furniture at the White Sulphur Springs bought by exceptant for himself and his associates from George L. Peyton & Co., after his purchase of the real estate, pursuant to the agreement of 30th January, 1880.

The amount to be paid for seven-sixteenths of said furniture was to be at the rate of $35,000 for the whole; nine-sixteenths of it were to be paid for at a valuation to be thereafter made.

The whole of this furniture went into the possession and use of exceptant and his associates when they took possession of the real estate, and was turned over by them to the corporation as soon as it was organized.

Efforts were made before the organization of the corporation and by the corporation after it was organized to have the furniture
482 valued, so as to ascertain definitely the amount to be paid for the $\frac{9}{16}$th of it, but they proved unsuccessful, and no valuation was ever made. Exceptant and his associates, however, paid to George L. Peyton & Co., out of the profits of the season of 1880, the sum of $8,293.24, on account of the indebtedness for this furniture, and the corporation, after its organization, made payments on the same account. Subsequently to the appointment of the receiver in this case the suit referred to by Commissioner Leake as the suit of Effinger *v.* Stuart and others was brought in the circuit court of Augusta county, Virginia, against exceptant and his associates under the contract of 30th January, 1880, for the purpose of holding them personally liable for the balance due on account of this furniture, and was so proceeded in that a decree was rendered against them personally on the 10th day of June, 1885, for the said balance, which was ascertained by crediting the amount to be paid for said furniture by the payment made out of the profits of 1880 and the payments subsequently made by the corporation itself. The court fixed the amount to be paid for the whole of the furniture at $35,000, with interest thereon. George L. Peyton testifies that the amount would have been larger if the furniture had been valued as agreed on.

Two-thirds of the amount thus decreed were paid by exceptant, and the other third by his associate, Camden, the amount paid by exceptant being $15,196.82, making due him on that account, as of the date to which the commissioner has calculated interest, $20,569.12, which the commissioner has reported in his favor as an unsecured debt.

This indebtedness, as is manifest, does not stand on the footing of an ordinary debt due to a stockholder from the corporation of which he is a member. It arises out of a liability contracted by the promoters of the corporation prior to and in furtherance of its organization, and is just as clearly applicable to any amount that
483 may be found to be unpaid on account of their subscription to its capital stock as if it had been paid into the treasury of the corporation at the time it was organized, when the property for which it was due was turned over to it.

If, therefore, exceptant should be held liable (as he insists he ought not to be) for any part of his subscription to the capital stock of the corporation, the amount thus due him should be applied to the extinguishment of such liability, and Commissioner Leake ought to have so reported.

V. He excepts to said report because the commissioner reports

that John W. Kerr is the owner of forty of the bonds issued under the deed of trust of 6th April, 1882, to Carrington and Gordon, trustees, and of one hundred shares of the capital stock of the corporation, when he ought to have reported that John P. Branch is the owner of said bonds and shares of stock, he, and not said Kerr, being the real purchaser and owner thereof.

VI. He excepts to the report if it is to be construed as fixing the amount of purchase-money due the commissioners in the suit of Gay and Others *v.* The White Sulphur Springs Company at $183,085.86.

The true amount of that indebtedness can, as exceptant is advised, be ascertained only in the suit referred to the district court of the United States, sitting at Charleston, West Virginia, in which it is pending, having jurisdiction of the matter. Exceptant expects to be able to show in that suit that the amount really due is much less than that reported in this case by Commissioner Leake, not only by reducing by the decision of the Supreme Court of the United States, on the appeal which is now pending in that court, and on a rehearing under the petition therefor referred to by Commissioner Leake, the sums which have been decreed against him, but by show-
484 ing that he has made payments to parties entitled to the recovery for which he has not as yet received credit; so that, as he believes, it will appear that the amount really due is less than one-half of that reported by Commissioner Leake.

But, as already stated, he is advised that the amount due on this claim cannot be properly ascertained otherwise than by proceedings to be had in the suit of Gay and Others *v.* The White Sulphur Springs Company. He takes this exception not with the expectation of having the error in the amount reported corrected by this court, but to negative the inference that might possibly be drawn from his failure to advert toit that he concedes the amount reported to be really due.

Wishing to remove any possible ground for delaying the entry of a decree for sale in this case, he is willing that enough of the purchase-money shall be retained under the control of the court to meet the full amount reported, or claimed to be due, in the Gay suit, with the understanding that so much of the amount retained as may not be required to pay the amount found to be really due in that suit shall be applied in accordance with the rights of the parties in this suit.

(Signed) WILLIAM A. STUART,
By WM. J. ROBERTSON,
His Counsel.

2 July, 1887.

The real estate of the Greenbrier White Sulphur Springs Company having, since Commissioner Leake's report was filed, been sold for an amount insufficient to pay the liens upon it, William A. Stuart claims to be entitled as an unsecured creditor of said company to whatever amount of the liens reported in favor of the Bank of Lewisburg, and in favor of H. G. Dulaney and of himself, respectively, the proceeds of sale of said real estate may be in-

sufficient to discharge and pay off, and will ask to have paid him his ratable share as such unsecured creditor of the funds applicable to the debts due to the unsecured creditors of said company.

(Signed) WILLIAM A. STUART,
By WM. J. ROBERTSON,
His Counsel.

January, 1888.

485 And on another day, to wit: on the 9th day of July, 1887, the following exceptions were filed in the clerk's office:

In the United States Circuit Court for the District of West Virginia, Fourth Judicial Circuit.

WM. KNABE & Co., Who Sue, etc., }
vs. }
THE G. W. S. S. Co. *et al.* }

WM. A. STUART, for, &c., }
vs. }
THE GREENBRIER W. S. S. Co. }

Exceptions to Commissioner Leake's report of June 10th, 1887, by creditors other than claimants of the mortgage bonds, and these creditors who claim to hold such bonds as collateral security for their debts.

1st exception.

To the 6th lien reported by Commissioner Leake, called specially preferred debts due W. A. Stuart aggregating $4,004.59, they except for the reason that these debts cannot be regarded as a lien in any way upon the personal property of the corporation, the expenditures being principally for the benefit of the real estate, and at all events if they could be regarded as such lien to a very limited extent, and the wages paid employees cannot legally be treated as in any sense a lien.

2nd exception.

Seventh lien excepted to for the reason that the deed of trust therein mentioned cannot be held as legally constituting a lien to any extent whatever upon the property mentioned therein, the said deed being null and void from its inception, as will appear from the minute book and proceedings of the stockholders, depositions, &c., relating thereto.

486 3rd exception.

Ninth lien excepted to for the reason that the term of court at which the judgments therein mentioned were recovered did not commence until after an order had been entered by the U. S. court directing its marshal to take possession of the property and said marshal, in pursuance of said order, had taken possession.

4th exception.

We except to the lien reported by said commissioner on account of judgment recovered in April, 1883, as a lien upon the two acres in the proceedings mentioned, for the reason that they were obtained subsequent to the order of court directing its marshal to take possession of said property.

5th *question.*

We except to allowing W. A. Stuart's preferred debt of $4,004.50, reported as a first lien upon the furniture and other personal property which passed into the receiver's hands, for the reason set forth in the first exception.

6th exception.

The report of the commissioner in reference to the unsecured claim No. 24 of W. A. Stuart is excepted to if the commissioner holds that the same should be set off against the stock liability paid Stuart.

7th exception.

The report is further excepted to for allowing W. A. Stuart to apply the money which he owed for subscription to 250 shares of stock at par, and for 50,000 of bonds at 50 cents in the dollar, to the payment of debts of the company on which he was individually bound or to debts which he chose to pay or to purchase, when this sum of money should have gone into the coffers of the company and have been applied to the payment of all the unsecured debts of the company *pari passu* or distributed according to law.

487 8th exception.

The report of the commissioner in reference to the unsecured claim of J. N. Camden is excepted to for the same reason set forth in the 6th exception.

9th exception.

Said report is further excepted to for allowing W. A. Stuart to hold seven bonds of $500 each as a valid lien under the deed to Gordon and Carrington, for the reason that said deed was itself null and void, and, under the circumstances fully set forth in the evidence, W. A. Stuart can under no circumstances be regarded as entitled to claim any lien for said bonds.

10th exception.

The foregoing exception also applies to the three bonds of $500 each held by C. R. Mason & Co.

11th exception.

Said report is further excepted to for the reason that said commissioner reports that forty bonds held by said Kerr as valid and as constituting a lien under the said deed to Gordon and Carrington. Upon examining the testimony in this matter the court will

see at once that this was a transaction of John P. Branch, and that Mr. Kerr was simply interposed for the purpose of enabling Mr. Branch to carry out his intentions, which are so plain that a child can see them, while he never hoped that Mr. Kerr was or would be able at any time to fulfill the obligation which he undertook, and it will appear upon examining the evidence that the commissioner is plainly in error in treating this transaction as a *bona fide* transaction of John W. Kerr.

12th exception.

Said report is further excepted to because the commissioner fails to charge John P. Branch as a subscriber for the 250 shares of stock for which the evidence shows he did subscribe and received the certificate, and afterwards retained it for a considerable time,
488 then returned it to H. M. Mathews, president of the company, the said Mathews having no authority whatever to receive or cancel the same.

13th exception.

Said report is further excepted to, because said commissioner reports that Geo. L. Peyton, and not Wm. A. Stuart, is liable for the unpaid-up subscription on the stocks formerly subscribed for by Geo. L. Peyton, said Peyton having long since and with the knowledge of the board of directors of said G. W. S. S. Co. transferr- his stock to W. A. Stuart as collateral security for the payment of a debt due by Peyton to Stuart, and having, since the failure of the company, absolutely sold said stock to said Stuart who at the time knew that the unpaid-up subscription was yet to be paid, and who assumed all further liability thereon.

14th exception.

Said report is further excepted to because it reports that W. A. Stuart, if he is liable to pay for 250 shares subscribed to by him should have the right to offset the same against the company's liability to him on account of debts purchased by him, whereas there is no better settled principle of law than that the unpaid-up subscription to the capital stock of a corporation is a trust fund for the benefit of creditors and to be distributed among them *pari passu*.

15th exception.

Said report is further excepted to because it reports that the rents should be apportioned between the realty and personalty in the proportion of 80 to 20 per centum, whereas the personalty, being perishable, should have a larger proportion than this, despite the fact that some annual purchases have been made to replenish loss and broken furniture.

Respectfully submitted,

(Signed) H. H. MARSHALL,
TAZEWELL ELLETT,
Counsel for the Unsecured Creditors.

July 7th, 1887.

489 And on another day, to wit, on the 20th day of July, 1887, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

and

THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others
against
W. A. STUART and Others.

and

WILLIAM KNABE & Co., Who Sue, etc.,
against
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

These causes came on to be further heard at this term and were argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by consent of parties by counsel as follows: That A. F. Mathews, A. L. Boulware, L. B. Dellicker, and Tazewell Ellett be, and they are hereby, appointed commissioners for the purposes hereinafter mentioned, any two or more of whom may act. Said commissioners, or those of them who act, shall proceed, after giving notice by advertising in some newspaper published at Lewisburg, West Virginia, and in one or more newspapers published in the cities of Richmond and Baltimore, and by handbills to be circulated by them in such manner as they may deem most likely to give general notice of the time, terms, and place of sale, to sell at the Greenbrier White Sulphur Springs, at public auction, to the highest bidder all the properties, real and personal, reported by Commissioner W. J. Leake in his report filed on the 10th day of June, 1887, as the properties belonging to the said Greenbrier White Sulphur Springs Company; but in selling said property the said commissioners, or they who act, shall first sell
490 all the real estate known as the Greenbrier White Sulphur Springs property proper, except certain two acres of said property mentioned and described in said report and also mentioned in another report made by the same commissioner, filed on the same day; and they shall then sell any other real estate belonging to said company (other than the said two acres), and after such sales have been made that they proceed to sell all the personal property mentioned by Commissioner Leake in his said report filed the 10th of June, 1887; and after the sale of the said personal property aforesaid, that they do then proceed to sell the said two acres. Said sales are to be made upon the following terms, to wit: The real estate to be sold for cash as to 10 per cent. of the amount of sale; the residue thereof to be paid in five equal annual installments, to be secured by bonds of the purchaser or purchasers, and the title to be retained until the whole of the purchase-money is paid, and a deed ordered by the court as a further security; the bond for the

first installment to be further secured either by personal security thereon or by such other security as the said commissioners or those of them who act may deem sufficient, and the interest on the amount of each installment shall be calculated from the day of sale to the time of payment thereof and the same added to the principal; and said commissioners or those of them who may act are hereby authorized to sell the said personal property at public auction to the highest bidder, upon such terms as to cas- and credit or both, and in such parcels or altogether, as they may deem most judicious; but said commissioners are directed to take satisfactory security for the deferred payments of the purchase-money for any of the personal property which may be sold on credit.

And it is further ordered that any officer, director, or other person interested in said Greenbrier White Sulphur Springs Company may become purchaser or purchasers at said sale, but this order shall not be construed as giving authority to any of said commis-
491 sioners to become such purchaser.

And it is further ordered that said commissioners shall not proceed to act under this order until they or one or more of them, or some one for them or for one or more of them, shall give bond, with security, to be approved by one of the judges of this court, in the penalty of fifty thousand dollars ($50,000.00), payable to the United States of America and conditioned for the faithful discharge of the duties of their office or trust.

And on another day, to wit, on the 2nd day of August, A. D. 1887, the following order was made and entered of record, to wit:

W. A. STUART, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY

and

WM. KNABE & Co., &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

This day J. N. Camden presented here in court his petition praying to be allowed to file his exceptions to the report of W. J. Leake, made and filed in these causes on the 10th day of June, 1887, and that his said exceptions be heard and considered by the court on the final hearing of said causes; which said petition having been seen and inspected by the court, it is ordered that the same be filed.

And it is further ordered that the counsel of record be served with a copy of this order to show cause on the hearing of the cause, if any they have, why the prayer of the petitioner should not be granted. A service of a copy of this order upon the counsel of record shall be equivalent to personal service upon the parties.

492 In the Circuit Court of the United States for the District of West Virginia.

W. A. STUART, on Behalf of Himself and Others, Creditors, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

and

WM. KNABE & Co., on Behalf of Themselves and All Others Who are Creditors of the Defendant Company Similarly Situated, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY, W. A. STUART, and Others.

To the honorable judges of said court, in equity sitting:

Your petitioner, Johnson N. Camden, respectfully represents unto your honors that he is named as one of the defendants in the second above-entitled causes.

That the original bill was filed in this honorable court on the 10th day of April, 1883, in which original bill your petitioner was not impleaded, nor was he in any manner interested in the litigation of the matters in said bill contained.

That the bill in the second of the above-entitled causes was not filed until the 3rd day of September, 1885, in which your petitioner was made a party defendant, and for the first time was it sought to make him liable on account of the matters in said second bill as charged.

Your petitioner further represents that the process in the second of said causes, as appears by the return of the marshal made thereon, was executed on petitioner on the 11th day of September, 1885, in the city of Wheeling, W. Va., where petitioner was casually on business, the place where executed not being the residence of petitioner,

493 your petitioner at that time, and for many years before and ever since, being a resident of the city of Parkersburg, in said State, in which last-named place this honorable court is held.

Your petitioner avers and charges that said process having been so executed upon him at a place other than his residence and whilst he was so engaged in other business matters, and believing that, from information derived from others, he was only a formal party to said bill, the cause or matters of litigation went out of his memory, and the same received no attention from him until his attention was called to the filing of a report of Commissioner D. C. Gallaher, made under a decree in said first cause, which report was filed on the 30th day of May, 1885.

Your petitioner avers and charges that his attention to the report of said Commissioner Gallaher was so called long after the time of filing the same and, as he believes, after the process was so executed upon him in the second of the above causes as hereinbefore mentioned.

It is true that the said first-mentioned bill in the third item of the prayer of said bill requested that the commissioner, in the taking

of the account asked for, "be required to report the names of the stockholders of said defendant company, the number of shares owned by each, the par value of the same, and the amounts due and unpaid by each of said stockholders;" and, whilst this was true, your petitioner avers and charges that at the time of the institution of the said first suit he was not, and had not been for a long time, a stockholder of said defendant company or in any manner interested therein; on the contrary thereof, whilst the records of said defendant company show that he was an original subscriber to the stock of said company, yet, as a matter of fact, no certificate of stock was ever issued to him as a stockholder in said corporation, and inasmuch as petitioner was not made a party defendant to said
494 original bill, petitioner could have no notice that said prayer therein contained as above mentioned was intended to in any manner refer to him or others who had formerly subscribed to stock in said corporation.

Your petitioner further represents that after said process in said second suit was served upon him as above stated, and when his attention was called to the report of Commissioner Gallaher, filed as hereinbefore stated, he found upon examination of said report that said commissioner did find and ascertain, on page 36 of his said report, "that all of the $150,000 original stock was paid up."

Your petitioner calls attention of your honors to pages 32, 33, *et seq.* of Commissioner Gallaher's report as to the relation which your petitioner held to said corporation. It appears, on page 32 of said report, that your petitioner in the spring of 1881 sold his stock to R. A. Lancaster; and your petitioner avers and charges that his sale to said Lancaster included all his interests of every kind in said company and in the White Sulphur Springs property, he, the said Lancaster, to take the same with all liability of your petitioner of every kind thereunder, and to relieve petitioner of all responsibility relating thereto, whether as stockholder or otherwise, and no stock was ever issued to petitioner, but to said Lancaster and his assigns. It further appears on same page who were the stockholders of said corporation, to whom certificates of stock had issued; and it further appearing from the finding of said commissioner, as hereinbefore stated, that all of said stock had been paid in full, your petitioner avers and charges that, although said second bill averred and charged that said original stockholders had not paid up their said stock, yet, inasmuch as said commissioner had reported that your petitioner had so sold his stock and had reported that said original stock had been fully paid up, and inasmuch as said Lancaster was made a defendant to said second bill, your petitioner avers and charges
495 that he had good cause to believe, and did believe, that he was only a formal party to said second bill, and that it was not intended by said bill to have any affirmative relief as against your petitioner.

Your petitioner avers and charges that during the time from the institution of said second suit until the taking of the testimony filed with the report hereinafter mentioned he was engaged in the public service of the United States as a member of Congress thereof, and in

consequence absent from home most of the time, and being of opinion, from the inspection of said report above mentioned, that he was only a formal party to said suit, occasioned the seeming neglect in properly defending his interests therein; and, further, petitioner was of opinion that he had spoken to J. B. Jackson, Esq., who had theretofore attended to his legal business, to attend to said cause for petitioner. Your petitioner, relying upon the said Jackson in the premises, permitted the said litigation to escape his memory, and was surprised to learn that a report had been filed in said cause, wherein it was ascertained that a large sum of money was found due from petitioner on account of said stock, and also to learn that said Jackson had not been spoken to by petitioner, and that he was wholly unrepresented in said cause.

Your petitioner further represents and charges that, by reason of his absence as above mentioned and the absence of any one to represent him, he knew nothing of the decree made and entered in said two causes on the — day of June, 1886, referring the matters under said decree to William J. Leake, of Richmond, Virginia.

Your petitioner refers to the return of service made on said notice isssued by the said Leake and filed with his said report, by which it appears that said notice was served on the wife of your petitioner on the 26th day of July, 1886, whilst he was absent from home.

496 Your petitioner avers and charges that it appears from said return that said copy so served was a newspaper slip, and that the wife of your petitioner, as petitioner is informed and believes, did not preserve the same, nor did she forward the same to your petitioner, and so it was your petitioner was actually in ignorance of the filing of said report until after the time had elapsed in which, under the rule of this honorable court, he could file exceptions to the same, his first attention being called to the same on the day fixed for the hearing by telegram to New York city, where petitioner then was, at which time he promptly directed by telegraph his counsel to appear and except to same for him.

Your petitioner avers and charges that said report of Commissioner Leake, which was filed on the 10th day of June, 1887, is erroneous, so far as the same affects this petitioner, and the finding of said commissioner in ascertaining that said petitioner was indebted on account of his said stock in not having paid in full for the same is wrong and to the prejudice of your petitioner, and that your petitioner would have excepted to the same had he known that such finding had been so made, and your petitioner relies upon the testimony filed by Commissioner Gallaher with his report and the conclusions arrived at by said commissioner, which he prays to be read as part of this his petition to sustain your petitioner in this averment.

Your petitioner further represents that W. A. Stuart, plaintiff in the first cause and one of the defendants in said second cause, by the Hon. Wm. J. Robertson, on the 5th day of July, 1887, and within the time prescribed by the rules of this honorable court, filed his

exceptions to said report, and the same are to be considered by the court at the hearing of said causes.

Your petitioner avers and charges that the said W. A. Stuart was one of the subscribers to the original stock of said company,
497 and that the said Stuart stands in the same relation to said stock as your petitioner, and that if the said Stuart shall be by the judgment of this honorable court found to have paid for his stock, and that the report of said commissioner is erroneous as to him, then that said report should also be found erroneous as to your petitioner, as the evidence upon which said commissioner based his finding is equally applicable to petitioner as to the said Stuart. Your petitioner therefore begs leave to except to said report of Special Commissioner W. J. Leake, filed in said causes on the 10th day of June, 1887—

First. Because the commissioner reports that he, the said petitioner, still owes on account of his subscription for 188 shares of the capital stock of the Greenbrier White Sulphur Springs Company a balance of $9,495.12, with interest from 30th December, 1880, whereas said commissioner ought to have reported that the amount of said capital stock subscribed by petitioner, as also the amounts thereof subscribed for by the other stockholders (with the exception of H. M. Mathews), were fully paid for.

Your petitioner represents that this his exception is identical with the first exception of the said Stuart so filed by him, with the exception of the name, number of shares, and the amount due thereon; and inasmuch as the said Stuart by his exception states that "said commissioner ought to have reported that the amount of said capital stock subscribed for by said Stuart, as also the amounts thereof subscribed for by the other stockholders, with the exception mentioned, were fully paid for," your petitioner begs leave to rely upon said exception and the reasons therein contained following as part of this his petition, hereby adopting the whole of said first exception so filed, and prays that the same be read as part of this his petition and in connection therewith.

498 Second. Because the commissioner, after holding your petitioner bound for the sum of $9,495.12, with interest thereon from the 30th December, 1880, on the unpaid portion of his subscription to the capital stock, fails to report that he is entitled to set off against that liability the sum of $10,284.56 paid by him (including interest on his payment) under the decree rendered against him, Stuart, and others in favor of H. M. Bell, receiver, stating merely that your petitioner "claims" that it is to be so set off.

Your petitioner represents that his exception is identical with the said Stuart's 4th exception, only changing the names and amounts.

Your petitioner therefore begs leave to adopt said 4th exception of the said Stuart as his exception to said report, together with the statement of facts therein relied on, and prays that the same be read in connection with and as part of this his petition.

Inasmuch, therefore, as these the exceptions of your petitioner raise no new issues in said causes, and the filing of the same would

not in any manner delay the hearing of the same, and it appearing that the matters arising upon the exceptions of your petitioner are fully set out in the exceptions of the said Stuart filed to the said report, your petitioner avers and charges that he would suffer great wrong and oppression in having these his exceptions rejected by this honorable court and he be compelled to pay the large sum of money so reported against him, when, if it should be adjudged by this honorable court that the exceptions of the said Stuart are well taken, and he should be relieved from the payment of the sum so found against him.

In tender consideration whereof your petitioner prays that he have leave to file this his petition in said causes, and that he be allowed to except to the report of said Commissioner Leake filed in said causes on the 10th day of June, 1887, and that said exceptions contained in this his petition be considered by the court at the
499 hearing of said causes, and the matters of his exceptions be fully heard and determined at said hearing; and, as in duty bound, he will ever pray, etc.

—— ——, *Solicitor.*

DISTRICT OF WEST VIRGINIA, *Wood County,* } *ss:*

J. N. Camden, the plaintiff in the foregoing petition, being duly sworn, on oath says that the facts set forth in the within petition, so far as the same are stated upon his own knowledge, are true, and so far as stated upon information derived from others he believes them to be true.

(Signed) J. N. CAMDEN.

Taken, sworn to, and subscribed before me, in my office, this first day of August, 1887.

(Signed) L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

And on another day, to wit, on the 16th day of December, 1887, the following order was made and entered of record, to wit:

WM. A. STUART, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO.

and

WM. KNABE & CO.
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.*

Upon the petition of J. N. Camden, heretofore filed on the 2nd day of August, 1887, leave is given him to take and file exceptions to the report of Commissioner W. J. Leake, he agreeing to waive all
500 questions respecting services of process and submitting to all interlocutory orders heretofore made in this cause.

And on another day, to wit, on the 3rd day of November, 1887,

the following report of sale was filed in the clerk's office of said court:

THE GREENBRIER WHITE SULPHUR SPRINGS,
GREENBRIER COUNTY, W. VA., *September* 15, 1887.

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS Co. and Others.

THE GREENBRIER WHITE SULPHUR SPRINGS Co. and Others
vs.
W. A. STUART and Others.

WM. KNABE & Co., Who Sue, etc.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS Co. and Others.

In Chancery.

To the hon. the circuit court of the United States for the district of West Virginia, sitting at Parkersburg, in said district:

The undersigned, special commissioners, who were appointed by a decree of said court rendered on the 20th day of July, 1887, in the above-named causes, with directions to sell, in the manner and upon the terms prescribed by said decree, all the properties, real and personal, of the Greenbrier White Sulphur Springs Company in the bills and proceedings in said causes, and especially in the report of Comm'r W. J. Leake, filed on the 10th day of June, 1887, mentioned and described, beg leave to submit respectfully the following report:

501 Your commissioners, after having given notice, as required by said decree, of the time, terms, and place of sale, proceeded on Thursday, the 15th day of September, 1887, at the White Sulphur Springs, in Greenbrier county, West Virginia, to sell the said properties at public auction to the highest bidders, and W. A. Stuart, being the highest bidder for all of said properties, became the purchaser thereof at the following prices, viz:

1st. The Greenbrier White Sulphur Springs property proper—that is to say, a tract of about 7,000 acres of land, upon which are located the hotel, springs, cottages, and all the other improvements of said company, excepting therefrom a certain lot of two (2) acres, with the privilege of the water mentioned below; the Caldwell cemetery; about one-fourth of an acre, and the Methodist and Episcopal churches, with the lots as they stand, and which belong to said churches, and subject to the right of one E. F. Wicker to remove a frame building heretofore erected by him on said property near the James river and Kanawha turnpike—at the price of $325,000.00 (three hundred and twenty-five thousand dollars).

2nd. The interest of the said company, which interest is understood to be an undivided moiety, in a tract of about 2,800 (twenty-

eight hundred) acres of land in Alleghany county, Virginia, at the price of $500.00 (five hundred dollars).

3rd. A small tract of $11\frac{12}{100}$ acres of land, known as Atkinson land, in Greenbrier county, on Howard's creek, joining the lands of George Grant and others, at the price of $200.00 (two hundred dollars).

4th. All the personal property of every kind belonging to said company and mentioned in the said report of Comm'r Leake, filed on the 10th day of June, at the price of $30,000.00 (thirty thousand dollars).

502 5th. A lot of two acres at the eastern entrance to the improved grounds, mentioned in said report of Comm'r Leake and more fully described in a second report of said comm'r, filed on the same day, with the right, as a perpetual privilege and easement appurtenant to said lot, to use for drinking purposes only the water of the White Sulphur Spring on the tract first above named, at the price of $25,000.00 (twenty-five thousand dollars).

And that all of said sales amounted in the aggregate to the sum of $380,700.00 (three hundred and eighty thousand seven hundred dollars).

Your commissioners further report that, having first deducted from each of said sums ten per centum (10 %) thereof, as required by said decree, and which said ten per centums aggregated the sum of $38,070.00 (thirty-eight thousand and seventy dollars), the said W. A. Stuart, the purchaser as aforesaid, executed for the balances thus left the following bonds and notes, all dated Sept. 15, 1887, and with the interest to accrue thereon added to and included in each from its date to its maturity, viz:

1st. For the balances of the $325,000 bid for the 7,000 acres and of the $500 bid for the half of said 2,800 acres, as aforesaid, which were thrown together because they stand in the same relative position as to the debts and liens thereon, five bonds as follows:

One bond due one year after date, with Geo. W. Palmer as security, for	$62,105 40
One bond due two years after date for	65,620 80
One bond due three years after date for	69,136 20
One bond due four years after date for	72,651 60
One bond due five years after date for	76,167 20

2nd. For the balance of the $30,000 bid for the personal property as aforesaid, three notes, negotiable and payable at the Bank
503 of Lewisburg, all endorsed by Geo. W. Palmer, and due and payable at six, twelve, and eighteen months respectfully, viz:

One note for	$9,270 00
" " "	9,540 00
" " "	9,810 00

3rd. For the balance of the $25,000 bid for the said two acres and of the $200 bid for the said $11\frac{12}{100}$ acres, as aforesaid, which were thrown together because they occupy the same relative position as to the debts, four bonds as follows:

One bond due one year after date, with Geo. W. Palmer as surety, for	$4,808 16
One bond due two years after date for	5,080 32
One bond due three years after date for	5,352 48
One bond due four years after date for	5,624 64
One bond due five years after date for	5,896 80

And your commissioners have inquired and satisfied themselves as to the solvency and sufficiency of the said George W. Palmer as surety and endorser as aforesaid.

Your commissioners further report as to the ten per centum of the amount of said sales which they were directed by said decree to require to be paid in cash, that the said purchaser, W. A. Stuart, represented to and satisfied them that he was the holder and owner of a very large amount of debts which are first liens upon said properties, and to which the surplus of said cash payment, which would remain after paying the costs of suit and expenses of sale, would be applicable, and he insisted that it would be not only useless but a hardship upon him to compel him to pay all of said sum in cash, as it would necessarily remain idle for a longer or shorter time and then, to a large amount at least, be repaid to him upon his said debts; and he thereupon proposed to pay to your comm'rs on account of said cash payment, by a certificate of deposit from a national bank, a sum estimated
504 as sufficient to discharge all of said costs and expenses and to place in your commissioners' hands of said preferred debts a sum equal to the balance of the said ten per cent.; and your comm'rs, deeming this only reasonable and proper, agreed to and accepted this proposition conditionally—that is, subject to the action and approval of this hon. court, and upon a distinct agreement and understanding with said Stuart that they would report their action in this behalf and their departure from the strict and exact requirements of said decree, and in case the said court did not approve and ratify such action, but, on the contrary, disapproved thereof, that then and in that event they would return and deliver to him the said evidences of debt, and that he would then pay in and substitute therefor an equal amount of money; and in pursuance of this agreement the said Stuart has paid, by a certificate of deposit in the People's National bank, of Lynchburg, Va., the sum of $13,070.00 to your commissioners, and has turned over to them of said first lien debts a sum greater than $25,000.00, the two making more than the sum of $38,070, the am't of said ten per centum; and your comm'rs respectfully ask and recommend that this agreement and their action in pursuance thereof may be ratified and approved.

Your commissioners, by advertising in papers of the largest circulation, by distributing widely a great number of handbills, and in every way in their power used the greatest diligence and made the greatest efforts to bring said properties, their value and advantages, to the attention of the public and to secure bidders, but, with the exception of one small bid for the tract of 11.12 acres and one or two bids for the personal property, the only bids made and the only

ones deserving of notice were those of Mr. Stuart, the purchaser; and your comm'rs have no reason to believe and do not believe that at a resale the said properties would sell to any greater advantage, and they very much doubt whether as good prices could be
505 again secured, and they therefore respectfully recommend that the said sales shall be confirmed.

Your commissioners hereto append a statement of the expenses attending said sale, to which is to be added such commissions as this hon. court may see proper to allow them; all to be paid out of said cash payment; and in this connection your comm'rs beg leave to suggest that in view not only of the services rendered already and the labor performed by them and the responsibility connected therewith, but especially in view of the fact that they will be charged not only with the disbursement of the said cash payment, but also with the collection of the very large amounts of money represented by said bonds and notes and its disbursement to a very unusually large and widely scattered number of creditors who stand in different relations as lienors to the different funds arising from said sale, that there will be some five different and distinct disbursements of each fund, one for each payment; that a proper voucher must be prepared and taken from each creditor for every payment made; that these disbursements will amount in the aggregate to over $430,000, and that this duty and the consequent responsibility will extend over a long term of years. Three (3) per centum upon the original amount of said sales as above set forth will certainly not be more than reasonable compensation, and they therefore ask that this may be allowed them as their commissions.

Before making said sales or acting under said decree of July 20, 1887, one of said commissioners, Alex'r F. Mathews, executed and filed a bond, as called for by said decree, in the penalty of $50,000, with security, which was submitted to and approved by one of the judges of this hon. court.

Statement of Expenses of Sale.

Harlow & Argabright, adv't of sale in "Greenbrier Independent"	$42 00
Harlow & Argabright, 500 handbills	9 00
Advertising sale in "Rich'd State"	108 00
506 Advertising sale in "Richmond Dispatch"	142 50
Grundy, ag't, advertising in sundry papers	196 45
Telegram	65
N. W. Bowie's expenses, trip to Lewisburg	19 30
" " at Wh. Sul.	20 50
" fee as auctioneer	500 00

All of which is respectfully submitted.

(Signed) ALEX'R F. MATHEWS,
A. L. BOULWARE,
TAZEWELL ELLETT,
L. B. DELLICKER,
Special Commissioners.

507 And on another day, to wit, on the 17th day of December, 1887, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

and

WILLIAM KNABE & Co., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHER SPRINGS COMPANY and Others.

In Chancery.

Upon motion of the defendant, J. N. Camden, he has leave to file his answer to the plaintiffs bill, and the said answer is filed accordingly, and to it the plaintiffs reply generally.

The answer and exhibits referred to in the foregoing order are in words and figures following, to wit:

The Answer of J. N. Camden to a Bill Exhibited Against Him and Others in Said Court by Wm. Knabe & Co. and Others.

To the hon. judges of the circuit court of the United States for the district of West Virginia:

Your respondent, saving and reserving to himself all errors arising upon the bill and proceedings in this cause, answering, says that negotiations between respondent and his codefendant, Wm. A. Stuart, who was largely interested as a creditor in the Grenbrier White Sulphur Springs property, was opened up through Gov. Henry M. Mathews, which resulted in the agreement of the 30th January, 1880, between the said Stuart, respondent, and others, to organize a company for the purchase of the said White Sulphur Springs property from Wm. A. Stuart at a certain price, which in round numbers
508 was about $300,000, in case the said Wm. A. Stuart should become the purchaser of said property at the sale to take place soon thereafter under decree of court. This transaction was completed in January, 1880, and the sale under the decree of court was made and the said Stuart became the purchaser under the said agreement in March, 1880, but at a price somewhat larger than $300,000. The sale was confirmed early in May, 1880, and in view of the fact that the summer season would commence in a very short time, and the property was in very bad condition resulting from being in litigation several years, the parties interested in the purchase from Wm. A. Stuart determined to lose no time in refitting, repairing, and refurnishing the entire property, making many expensive changes and alterations in the property, and purchasing some $45,000 worth of new furniture. The total cost of improvement, betterments, and new furniture amounted to a large sum, of which there was paid in cash by the parties interested in said purchase about seventy thousand dollars ($70,000).

During the season of 1880 the property was operated and run by the parties, under the purchase from Wm. A. Stuart, with marked success, realizing a net profit of about $56,000 for the season, as respondent was informed and fully believed and still believes, which amount was also appropriated and devoted to the improvement and enhancement in value of the said property, the parties in interest having all given largely of their time and attention to the development of the said property without charge for the time, expenses, and labor in connection with the same; that after the close of the season of 1880 the parties in interest in said purchase got together for the purpose of executing and carrying out their design of organizing a company or corporation to purchase the property, and to that end a charter was obtained and a company organized which did become the purchaser of the property as a whole, including the assignment of the contract of purchase from Wm. A. Stuart, together with all improvements, betterments, furniture, and fixtures,
509 at the price of $150,000, and paid for the same by $150,000 of the capital stock of the company, at its par value, to the following stockholders: Wm. A. Stuart, J. N. Camden, W. P. Thompson, Geo. L. Peyton, H. M. Mathews; the said company assuming all liabilities to W. A. Stuart and other creditors.

Your respondent avers that the whole transaction was made in good faith, and, as he considered, a plain legitimate business transaction; that the parties had full right to sell the property to a corporation at a fair and reasonable price to be greed upon respondent and his co-purchasers under said contract were so advised by able counsel; and the resolution passed by the board of directors of said company making such purchase was prepared by John K. Cowan, their legal adviser, and was adopted and ratified by the said company in full directors' meeting and ordered to be spread upon the records of said company. Your respondent herewith files a copy of said resolution or order, marked "Exhibit J. W. C," the original being filed with the deposition of respondent in a chancery suit in the circuit court of Augusta county, Virginia.

Respondent further states that the directors' meeting at which said order was passed was held at Barnum's hotel, in the city of Baltimore, and Col. W. P. Thompson was the acting secretary, and that soon thereafter respondent and the said Thompson sold all their interests to R. A. Lancaster, and, as respondent recollects and believes, it was the last directors' meeting attended by respondent or the said Thompson; that the minutes and records of the said meeting were kept by the said Thompson on sheets of paper, from which the original order as aforesaid was obtained, and if the said order does not appear on the present records of the company it is doubtless because it was omitted through inadvertence in writing up said proceedings.

Your respondent further states that notwithstanding the fact that the said company purchased said property from respondent and the parties in interest, to be paid for by $150,000 of the capital
510 stock of the said company, and assumed all outstanding liabilities, your respondent was afterwards made personally

liable, and a decree obtained against him in the circuit court of Augusta county, for about $10,000, as reported by the commissioner, which respondent has paid in full. This decree and judgment was obtained against respondent for property in the possession of and used by the company, and respondent is entitled to be compensated for the same in some form; but respondent does not and did not claim, as stated by the commissioner in his report, that respondent claimed it as an offset against unpaid stock. Respondent never admitted such liability; but should your respondent be mistaken, and the court hold that such liability exists, then respondent asks and insists that the money so paid by him as aforesaid shall be allowed by him as a credit and offset upon such liability.

Your respondent, therefore, alleges that all the stock subscribed for by him in said company has been fully paid up, and he denies that there is any liability upon him, as charged in said bill, for his portion of said stock, and respondent denies each and every allegation of said bill made not hereinbefore admitted, and, having fully answered, prays to be hence dismissed.

(Signed) J. N. CAMDEN.

Subscribed and sworn to before me this 17th day of Dec., 1887.

(Signed) L. B. DELLICKER,
Clerk, Circuit Court U. S., D. W. Va.

The exhibit referred to in the foregoing answer is in words and figures following, to wit:

EXHIBIT "J. K. C." Filed with the Deposition of J. N. Camden in the Cause of Effinger and *als. vs.* Stuart.

Whereas J. N. Camden and Geo. L. Peyton hold the agreement of William A. Stuart for the purchase of the Greenbrier
511 White Sulphur Springs property; and

Whereas, said Wiliiam A. Stuart, in pursuance of said agreement, has purchased said property at a judicial sale made under a decree of the district court of the United States for the district of West Virginia on the 31st day of March, 1880; and

Whereas since said purchase said Camden and Peyton and their associates have made large permanent improvements on said property and have refurnished and refitted the hotel situated thereon and have placed in and upon said premises a large amount of personal property: therefore,

1. Be it resolved, That in consideration of the transfer to this company of the contract with said W. A. Stuart, and also of all the improvements, furniture, and personal property of all descriptions placed by said J. N. Camden and his associates upon said premises, this company do agree, for the consideration aforesaid, to accept the same in full payment of the unpaid balances by said J. N. Camden and on their several subscriptions to the capital stock of this company as set forth in the certificate of incorporation.

2. Resolved, That when said transfer of the contract and property aforesaid is duly made to this company there shall be issued to the

parties named in the foregoing resolution certificates of fully paid-up stock for the amount which they have respectively subscribed as set forth in the certificate of incorporation aforesaid.

Copy.
Teste:
(Signed) J. N. RYAN, *Clk.*

512 And on the same day, to wit, on the 17th day of December, 1887, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others

and

WILLIAM KNABE & Co., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

} In Chancery.

Upon motion of counsel for complainants, a general replication is filed *nunc pro tunc* to all the answers heretofore filed in the above-entitled causes.

And on the same day, to wit, on the 17th day of December, 1887, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others

and

WILLIAM KNABE & Co., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others.

} In Chancery.

This day came Thos. Branch & Co. and the Merchants' National Bank of Richmond Virginia, by Charles S. Stringfellow and Leigh R. Page, their counsel, and moved the court for leave to waive the exceptions heretofore filed to Commissioner Wm. J. Leake's report. Upon consideration whereof it is ordered that such leave be granted, and the said exceptions are accordingly waived.

513 And on another day, to wit, on the 7th day of January, 1888, the following decree was made and entered of record, to wit:

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SUL. SPGS. CO. and Others.

THE GREENBRIER WHITE SUL. SPGS. CO. and Others
vs.
W. A. STUART and Others.

— —
vs.
THE GREENBRIER WHITE SUL. SPGS. CO. and Others.

In Chancery.

Decree.

These three causes came on this day to be again further heard together, and were argued by counsel; and it appearing from the report of sale made by Special Commissioners Alex'r F. Mathews, A. L. Boulware, Teazewell Ellett, and L. B. Dellicker, pursuant to the decree rendered on the 20th day of July, 1887, which report was filed on the 3rd day of November, 1887, and to which there is no exception, that the said commissioners, in accordance with the provisions and requirements of said decree, sold the properties thereby directed to be sold, being all the properties, real and personal, of the Greenbrier White Sulphur Springs Company, at public auction on Thursday, the 15th day of September, 1887, at the White Sulphur Springs, in Greenbrier county, and that W. A. Stuart, being the highest bidder for all of said properties, became the purchaser thereof at the following prices, viz:

1st. The Greenbrier White Sulphur Springs property proper—that is to say, a tract of about 7,000 acres of land, upon which are located the hotel, springs, cottages, and all the other improvements of said company, excepting therefrom a certain lot of two (2) acres with the privilege of the water mentioned below, the Calwell cemetery,
514 about one-fourth of an acre, and the Methodist and Episcopal churches with the lots on which they stand, and which belong with said churches, and subject to the right of one E. F. Wicker to remove a frame building heretofore erected by him on said property near the James river and Kanawha turnpike, at the price of $325,000.00 (three hundred and twenty-five thousand dollars).

2nd. The interest of said company, an undivided moiety, in a tract of about 2,800 (twenty-eight hundred) acres of land in Alleghany county, Va., at the price of $500.00 (five hundred dollars).

3rd. A small tract of $11\frac{13}{100}$ acres of land known as "Atkinson" land, in Greenbrier county, on Howard's creek, joining the lands of George Grant and others, at the price of $200.00 (two hundred dollars).

4th. All the personal property of every kind belonging to the said company and mentioned in the report of Comm'r Leake, filed

on the 10th day of June, 1887, at the price of $30,000.00 (thirty thousand dollars).

5th. A lot of two acres at the eastern entrance to the improved grounds, mentioned in said report of Comm'r Leake and more fully described in a second report of said comm'r filed on the same day, with the right as a perpetual privilege and easement appurtenant to said lot to use for drinking purposes only the waters of the White Sulphur spring on the tract first above named, at the price of $25,000.00 (twenty-five thousand dollars).

And that all of said sales amounted in the aggregate to the sum of $380,700.00 (three hundred and eighty thousand seven hundred dollars).

And it appearing further from said report that after said commissioners had first deducted from each of said sums ten per
515 centum thereof as required by said decree of July 20th, 1887, and which ten per centums aggregated the sum of $38,070.00 (thirty-eight thousand and seventy dollars), the said W. A. Stuart, the purchaser as aforesaid, executed for the balances thus left the following bonds and notes, all dated Sept. 15, 1887, and with the interest to accrue thereon added to and included in each from its date to its maturity, viz:

1st. For the balances of the $325,000 bid for the said 7,000 acres and of the $500 bid for the half of said 2,800, which acres were thrown together because they stand in the same relative position as to the debts and liens thereon, five bonds—

One bond due one year after date, with Geo. W. Palmer as security, for	$62,105 40
One bond due two years after date for	$65,620 80
One bond due three years after date for	$69,136 20
One bond due four years after date for	$72,651 60
One bond due five years after date for	$76,167 20

2nd. For the balance of the $30,000 bid for the personal property three notes, negotiable and payable at the Bank of Lewisburg, all endorsed by Geo. W. Palmer and due and payable at six, twelve, and eighteen months, respectively, viz:

One note for	$9,270 00
" "	$9,540 00
" "	$9,810 00

3rd. For the balance of the $25,000 bid for the said two acres and of the $200 bid for the said $11\frac{12}{100}$ acres as aforesaid, which were thrown together because they occupy the same relative position as to the debts, five bonds as follows:

One bond due one year after date, with Geo. W. Palmer as surety, for	$4,808 16
One bond due two years after date for	$5,080 32
One bond due three years after date for	$5,352 48
516 One bond due four years after date for	$5,624 64
One bond due five years after date for	$5,896 80

And that said commissioners have inquired and satisfied themselves as to the solvency and sufficiency of the said Geo. W. Palmer, as surety and endorser as aforesaid.

And it appearing further from said report, as to the ten per centum of the amount of said sales, which was required by said decree to be paid in cash, that the said purchaser, W. A. Stuart, represented to said commissioners and satisfied them that he was the holder and owner of a very large amount of debts which are first liens upon said properties, and to which the surplus of said cash payment which would remain after paying the costs of suit and expenses of sale would be applicable, and that he insisted that it would be not only useless but a hardship upon him to compel him to pay all of said sum in cash, as it would necessarily remain idle for a longer or shorter time, and then, to a large amount, at least, be repaid to him upon his said debts, and that he therefore proposed to pay to the said commissioners, on account of said cash payment, by a certificate of deposit in a national bank, a sum estimated as sufficient to discharge all of said costs and expenses, and to place in the hands of said commissioners, of said preferred debts, a sum equal to the balance of said ten per cent., and that the commissioners deemed this reasonable and proper and agreed to and accepted this proposition conditionally—that is, subject to the action and approval of the court, and upon a distinct agreement and understanding with said Stuart that they would report their action in this behalf and their departure from the strict and exact requirements of said decree, and that in case the court did not approve such action, that then, and in that event, they would return to him said evidences of debt, and that he would then pay in and substitute therefor an equal amount of money, and
517 that in pursuance of this agreement the said Stuart has paid by a certificate of deposit in The Peoples' National Bank of Lynchburg, Va., the sum of $\$13{,}070\frac{00}{100}$ to said commissioners, and turned over to them of said first-lien debts a sum exceeding $25,000, the two making more than the sum of $38,070, the amount of said ten per centum; and it also appearing that said commissioners ask and recommend that this agreement and the settlement in pursuance thereof may be ratified and approved; and it appearing further from said report that the said commissioners are of opinion that said properties, if resold, will not sell for any greater prices, and that they recommend that the said sale made by them as aforesaid shall be confirmed; and it appearing further from said report that one of said commissioners, Alex'r F. Mathews, before said sale was made and before acting under said decree of July 20th, 1887, executed and filed a bond as called for by said decree in the penalty of $50,000, with security, and that the same was submitted to and approved as sufficient by one of the judges of this court, and a statement of the expenses attending said sale being appended to said report; upon consideration of all of which it is hereby adjudged, ordered, and decreed that the said report and sales and the said settlement and adjustment of the said cash payment made by the said commissioners, and their departure from

the exact and strict requirements of the said decree of July 20th, 1887, be, and they are hereby, in all respects ratified, approved, and confirmed.

And it is further adjudged, ordered, and decreed that the said bonded commissioner, Alex. F. Mathews, out of said cash payment, pay the costs of advertising said sale.

And it is further adjudged, ordered, and decreed that the said commissioner, A. F. Mathews, shall retain the said sale, bonds, and notes subject to the further order of the court, when the questions raised by the exceptions taken to the report of Commissioner Leake shall have been settled and amounts and priorities of the debts fixed.

518 And A. L. Boulware, the receiver in this cause, is hereby directed to turn over and deliver to Wm. A. Stuart all of the real and personal property purchased by him as hereinbefore set forth; and when he shall have delivered the same to said Stuart he shall be relieved from further responsibility therefor, but is retained as receiver for other purposes in this cause; and it is further ordered that the receiver settle his accounts with convenient speed before the auditor of this court.

And the further consideration of this cause is continued until the 9th day of February next.

And on another day, to wit, on the 9th day of February, 1888, the following opinion was filed in the office of the clerk of said court:

"The matter before us arises upon a bill in chancery filed by William A. Stuart, who sues in behalf of himself and others to enforce a mortgage claim against the Greenbrier White Sulphur Springs Company, and upon a bill filed by Wm. Knabe & Co. for himself and others against the same company, seeking to have the property sold for the benefit of unsecured creditors. It has been agreed that the causes shall be heard together, as the one decree can, upon the facts, decide the claims of each.

The property in this case was, in 1880, in the possession of Wm. A. Stuart, J. N. Camden, and Geo. L. Peyton, who mutually agreed to form a joint stock company, to which should be conveyed all the property of the Greenbrier White Sulphur Springs, buildings, furniture, and everything connected therewith. A charter was applied for in 1880 and granted, but the company was not organized under it, but on December 6, 1880, a new charter was granted the same parties, and, as required by law, the application therefor was sworn to, which application stated that the parties above named had

519 subscribed for $150,000 to the capital stock of said company, and had paid in on their subscription the sum of $50,000.

We can find no proof in the cause that any part of this fifty thousand dollars was paid in cash. Stuart had purchased the real estate and buildings and Camden and Peyton owned the furniture then on the premises known as Greenbrier White Sulphur Springs, and they agreed to turn it all over to the new company, Stuart reserving a vendor's lien, and these items together constituted the assets of the

new company, and were valued at $50,000, and credited upon the stock subscription of each in proportion to his stock subscription.

That parties agreeing to put certain property or assets into a corporation about to be formed are entitled to place a value upon them, excessive, perhaps, though not fraudulent, which, if received by the company, must be taken at a fixed value may be true. Stock may be issued to the amount of the estimated value, and creditors of the corporation will be bound by the action of the company.

Fraud cannot be presumed, but must be proved, and we see nothing in this transaction which will warrant us in stamping the agreement between Stuart, Camden, and Peyton and the new corporation, of which they were the sole corporators, as fraudulent.

But one hundred and fifty thousand dollars worth of stock was issued, and whether the property transferred to the company was worth more or less than $50,000 the parties put that valuation upon it, and, so far as the creditors are concerned, that must be held to be all that was paid in as subscription to the stock.

The effort to make it appear that there were other considerations of value from Camden, Stuart, and Peyton to this new company which should be credited in payment of stock, such as the book accounts and profits of the year preceding when the corporators con-
520 ducted the business of the Greenbrier White Sulphur Springs, and the experience and good will which they transferred to the new corporation, is not justified by the evidence. It is doubtful whether there had been any profits of the year before, and the instructions of the parties to their agent to make out a statement making as good a showing as he could for them, to aid in the appreciation of the stock of the new corporation, shows that there is little reliance to be placed on that statement.

Be this so or not, we are of opinion that whatever of interest at the date of the acceptance of this charter and the organization of this company the parties had in the White Sulphur Springs, to wit, Dec. 29, 1880, they transferred to it and received stock therefor to the extent of $50,000, which was the value they themselves had placed upon such property and interest. There is no other way to account for that credit, for it is not pretended it was paid in cash, and the company received no other consideration from the three parties above named at the time of its organization.

Subsequently to this—that is, on the day following—the stockholders were required to pay up their proportions of $4,000 agreed to be paid, which was declared to be in full payment of $150,000 worth of stock. Whatever of this sum was paid in by either of the stockholders, we think should be credited to him on his stock payment.

Mr. Camden seeks to have a payment made by him on a judgement recovered against him for the price of some of the furniture which was turned over in 1880 to the new company credited on his stock subscription. As he has already been allowed the value of that furniture in his original payment, to allow this claim would be to credit him twice for the same thing. We must, therefore, sustain

the report of the commissioner refusing this credit and place
521 it among those of unsecured creditors. Mr. Stuart makes a similar claim, but we think he too must be placed among the unsecured creditors, as the commissioner, Leake, has reported.

On the 9th day of February, 1882, the business of the company having proved a failure for that season and the company itself being insolvent, the board of directors ordered that coupon bonds to the amount of $200,000 be issued and secured by a deed of trust. The bonds were to run 30 years, if not redeemed within 15 years, with interest at 6 per cent., payable semi-annually. They were not to be sold at less than 50 cts. in the dollar. $100,000 of stock was to be issued at the same time, and each purchaser of $200 worth of bonds was to receive $100 of paid-up stock. The sale of both stock and bonds was confined to "present stockholders" until a fixed date, when, unless all were then taken, they might be sold to the public.

This deed of trust and the bonds secured by it are void under the law of West Virginia, which forbids corporations to issue stock for less than par value paid up, and so far as the actual issue of it is concerned, it is void in the hands of the present holders, because it appears from the evidence that they paid no cash for it, but merely transferred to the company outstanding unsecured liabilities of the company in the hands of those to whom the stock and bonds were issued. It appears to have been a mere deal among the present directors and stockholders by which they might secure the company's indebtedness to them, which was otherwise unsecured, to the disadvantage of all other creditors, and is void for that reason. The validity of this deed of trust and of the bonds and stock issued under it is not seriously maintained, we think, by any one at bar.

But a claim is presented on the part of John W. Kerr, as the assignee of John P. Branch, who subscribed for a portion of these bonds, for 40 bonds and one hundred shares of the stock,
522 secured by the deed of trust.

Branch was a director in the company, paid no cash for the bonds or stock. He returned to the company nothing therefor but certain unsecured liabilities of the company, and Kerr is a purchaser from him without value, as he never paid a cent for anything he holds, and the evidence leads one to think he allowed himself to be held, rather to secure Branch in the transaction, for he was to lose nothing if the speculation failed and gain nothing if it succeeded.

The claim of C. R. Mason & Co. is equally untenable. Mason received the bonds held by his firm after the known insolvency of the company and the appointment of a receiver, and he holds them subject to all the equities to which they would be held in the hands of his assignee, Stuart.

A decree will therefore be passed declaring this defendant company insolvent, and that the original subscribers to its capital stock of $150,000 are liable for their unpaid subscriptions thereto; that they are to be credited on such subscriptions with an equal share of the property originally transferred to the corporation, valued at $50,000.

That the claims of Camden, Kerr, and Mason & Co. will be disallowed, and a call will be made upon all the stockholders to pay into the hands of the receiver the full amount of their unpaid stock subscriptions due at this time. And the receiver is continued for this purpose and for the purpose of collecting the same under the direction of the court.

The decree will also finally confirm the sale heretofore made by the commissioners heretofore appointed for that purpose, and the purchaser will be required to pay the purchase-money as the same falls due, and payable into the registry of the court, to be from time to time distributed under its order; and the commissioners are required to place all such securities and cash as they may
523 now hold, being the proceeds of said sale, into the registry of the court.

And it is further to be decreed that out of the cash payment the said commissioners shall be allowed the sum of $1,000 for their services in this behalf, to be equally divided between them, and the costs and expenses of the clerk incurred herein, not to exceed the sum of —, for which he has produced vouchers."

And on another day, to wit, on the 11th day of February, 1888, the following decree was made and entered of record, to wit:

W. A. STUART and *als.* *vs.* THE GREENBRIER WHITE SUL. SPGS. Co. & *als.*	In Chancery. Decree, Feb'y —, 1888.
WM. KNABE & Co., Who Sue, &c., *vs.* THE GREENBRIER WHITE SUL. SPGS. Co. & *als.*	
THE GREENBRIER WHITE SUL. SPGS. Co. & — *vs.* W. A. STUART and *als.*	

These causes came on this day to be again heard together, and were argued by counsel. Upon consideration whereof the court doth adjudge, order, and decree as follows: First, that the deed of trust executed by the Greenbrier White Sulphur Springs Company to W. W. Gordon and Isaac H. Carrington, trustees, on the 6th day of April, 1882, for the purpose of securing an issue of four hundred (400) coupon bonds of the said company for five hundred (500) dollars each, aggregating two hundred thousand (200,000) dollars, is null and void, and that said deed does not constitute any lien whatever on the property thereby conveyed; and second, that the bill of Wm. A. Stuart and others
524 in the first of these said causes be dismissed, with costs, to be paid by the plaintiff, W. A. Stuart; and third, A. L. Boulware, who was appointed and duly qualified as receiver in the said first

cause here now dismissed, be, and he is hereby, appointed receiver in the second and third of these said causes for the purposes hereinafter indicated; but the said receiver, before acting as such, shall give bond in the penalty of $30,000, with security, to be approved by one of the judges of this court, conditioned for the faithful discharge of his duties as such receiver, but this order of appointment shall not affect or impair the power or authority of said Boulware in the discharge of any duties yet unperformed as receiver under his appointment heretofore made in the first of these causes. Fourth, that the exceptions taken and filed by W. A. Stuart and Johnson N. Camden, respectively, to the report of Comm'r W. J. Leake, so far as it ascertains and reports a liability upon the original stockholders of the defendant company for unpaid stock, be, and they are hereby, overruled, and that said report, which states and fixes the amount of the said liability on said original stockholders, who were W. A. Stuart, Geo. L. Peyton, H. M. Mathews, J. N. Camden, and Wm. P. Thompson, as follows: The said W. A. Stuart, $18,937.08; the said Geo. L. Peyton, the like sum of $18,937.08; H. M. Mathews, the sum of $19,937.08; Johnson N. Camden, $9,495.12; Wm. P. Thompson, $9,441.96, making the total indebtedness of the said original stockholders on account of their unpaid subscriptions to the capital stock of said company $76,748.32, as of the 30th of December, 1880, from which time the said several sums bear interest at the rate of 6% *per centum* per annum until paid, be approved and confirmed; and fifth, that the said W. A. Stuart, Geo. L. Peyton, Johnson N. Camden, and Wm. P. Thompson do pay to the said Greenbrier White Sul. Springs Co. the said several sums ascertained to be due
525 from them as aforesaid, with interest on each of said sums from the 30th day of Dec'r, 1880, until paid, and that J. W. Mathews, adm'r of H. M. Mathews, who is now dec'd, out of any assets in his hands belonging to the estate of his intestate, do pay to the said company the said sum ascertained to be due from said intestate, with like interest, and that A. L. Boulware, the receiver in the 2nd and 3rd of these causes, is authorized and directed to collect the said several sums of money from the said several parties against whom they are decreed as aforesaid by suit or any legal proceeding which he may be advised to take, either in this district or elsewhere, and to use the name of the Greenbrier White Sulphur Springs Company in such proceedings or suits, or he may institute such suit or suits or other legal proceeding in his own name, as receiver in the 2nd and 3rd of these causes, as he may be advised; and sixth, that the exceptions taken by the unsecured creditors to the report of Comm'r Leake so far and because it reports and allows certain judgments prior to April, 1883, and also certain other judgments of the April term, 1883, of the circuit court of Greenbrier county, as preferred liens, according to their respective dates and amounts, upon the "two acres" in the bills and proceedings mentioned, be, and they are hereby, overruled, and the said report in allowing said judgments or such liens be, and it is hereby, confirmed; and seventh, that so much of the amount reported in favor of W. A. Stuart as a vendor's lien against the defendant company and upon its real

estate as will still remain unpaid after the application thereto of so much of the net proceeds of the sale of said real estate as is applicable thereto shall stand as an unsecured debt against said defendant company, and shall share ratably with the other general and unsecured debts in the assets of said company applicable thereto; and eighth, that W. A. Stuart, for the debts against said defendant company which were turned in by him upon the purchase of bonds and stock under the deed of trust of April 6, 1882, and which deed
526 and the bonds issued thereunder have been set aside and annulled, shall stand in like manner and to the extent of said debts as an unsecured creditor, and shall share ratably with other debts of the unsecured and general class in the assets of said company applicable thereto.

The exception taken by the unsecured creditors to the report of Commissioner Leake, so far as it reports and allows a preferred debt in favor of John W. Kerr for the sum of $20,000 on account of the bonds of said company claimed to be owned by him, is hereby sustained, and said report in favor of said Kerr is hereby overruled and set aside; but it further appearing that Thos. Branch & Co., who hold said bonds as collateral security for the note of said Kerr, have paid for said bonds in part by the surrender to the said White Sulphur Springs Co. of $7,140.08 of the debt due by said company to Thos. Branch & Co. and for the residue of the payment to said company of the sum of $12,858.92 in cash, it is further ordered that for said sum of $20,000 and interest on the same from the date of its payment as aforesaid, to wit, May 3rd, 1882, said Thomas Branch & Co. are entitled to stand as unsecured creditors, entitled to share ratably with other creditors of the same class in all funds applicable to the payment of such claims.

And the court doth overrule the exception of counsel for general creditors in respect to amount reported by the comm'r in favor of W. A. Stuart for insurance and labor paid by him.

And A. L. Boulware, receiver in the first of these causes, is directed to pay over any and all moneys in his hands to the credit of this cause to the register of this court, and the said register shall pay said fund, when thus paid in, to the extent of 80 per cent. thereof, which represents the proportion of said fund that accrued from the rental of the real estate of the defendant company upon the debt reported and allowed by Comm'r Leake in favor of the Bank of Lewisburg, and which is the first lien upon the said fund to
527 the said extent of 80 per centum thereof, and the said report of Comm'r Leake as to said debt in favor of the Bank of Lewisburg is hereby approved and confirmed, and the commissioners of sale are hereby directed to pay all such securities and cash as they may now hold, being the proceeds of the sales made by them, into the registry of the court, and the purchaser of the properties sold in these causes shall pay the purchase-money for the same as it falls due and payable into the registry, but the said register is hereby authorized and empowered to accept and receive from such purchaser on account of the amount due from him as aforesaid as cash such evidences of debt against said company as would be enti-

tled to be paid with said purchase-money when and if it were paid in cash into the registry of the court; and the report of Comm'r W. J. Leake, filed in this cause, so far as it has not been modified or overruled by this decree, is hereby in all respects approved and confirmed; and it is further adjudged, ordered, and decreed that the register of this court, out of the money to be paid to him by the commissioners of sale, pay to each of said commissioners the sum of $1,000 as their commission and compensation in this behalf, and that he also, out of said fund, pay all the costs of these suits and the expenses in addition to said commissions attending said sales, to be audited and taxed by him, except the costs in the first of these suits, to be taxed separately, and which are to be paid by the plaintiff therein, W. A. Stuart, as aforesaid.

And it appearing to the court that W. A. Stuart, the purchaser of the real estate of the Greenbrier White Sul. Springs Co., under decree in these causes has sold a church lot of about one acre outside of the lawn and enclosure of said springs property, at the price of four hundred (400) dollars, for the use of the Catholic church, to be used for church purposes only and to revert to him when it ceases to be so used, it is further adjudged, ordered, and decreed that upon the payment of said sum into the registry of this court, then
528 Alex'r F. Mathews, who is hereby appointed a special comm'r for the purpose, shall convey the said lot to the purchaser thereof, or to such person as he may direct by deed, with conditions and reservations as agreed between said Stuart and the said purchaser from him as aforesaid, with special warranty of title, free and discharged from any lien for purchase-money due from said W. A. Stuart on his purchase under said decree, for which the grantor in said deed shall pay him a fee of $10.

And on the same day, to wit, on the 11th day of February, 1888, the following order was made and entered of record, to wit:

WM. A. STUART *et al.*
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO.

THE GREENBRIER WHITE SULPHUR SPRINGS CO.
vs.
WILLIAM A. STUART and Others. } In Equity.

and

WILLIAM KNABE & CO., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO.

On motion of Johnson N. Camden, a defendant in one of the above-entitled causes, an appeal is allowed him from the final decree entered in these causes on this day, to operate as a supersedeas upon the said Johnson N. Camden, or some one for him, giving bond with good security to be approved by one of the judges of this court in the penal sum of twenty thousand dollars, conditioned according to law.

529 And on another day, to wit, on the 9th day of April, 1888, the following bond was filed in the clerk's office of said court:

Know all men by these presents that we, J. N. Camden, G. W. Thompson, and B. D. Spilman, are held and firmly bound unto W. A. Stuart, on behalf of himself and all the other creditors of the Greenbrier White Sulphur Springs Company who may come in and contribute to the costs of suit, W. W. Gordon and Isaac H. Carrington, trustees, and Wm. Knabe, Earnest Knabe, and Charles Keidell, partners trading and doing business under the style and firm name of Wm. Knabe & Company, on behalf of themselves and all others who are creditors of the defendant company similarly situated, and who will contribute their proportion of the costs of this proceeding, in the full and just sum of twenty thousand dollars ($20,000), to be paid to the said William A. Stuart, on behalf of himself and all the other creditors of the Greenbrier White Sulphur Springs Company who may come in and contribute to the costs of suit, W. W. Gordon and Isaac H. Carrington, trustees, and Wm. Knabe, Earnest Knabe, and Charles Keidell, partners trading and doing business under the style and firm name of Wm. Knabe & Company, on behalf of themselves and all others who are creditors of the defendant company similarly situated, and who will contribute their proportion of the costs of this proceeding, their certain attorneys, administrators, executors, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in suits pending in said court between the above-named plaintiffs and the Greenbrier White Sulphur Springs Company and others, defendants, a decree was rendered against the said J. N. Camden and others, and the said J. N. Camden having obtained an appeal and filed a copy thereof in the clerk's
530 office of the said court to reverse the decree in the aforesaid suits, and a citation directed to the said above-named plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said J. N. Camden shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. N. CAMDEN. [SEAL.]
" GEO. W. THOMPSON. [SEAL.]
" B. D. SPILMAN. [SEAL.]

Sealed and delivered in the presence of—
L. B. DELLICKER.

Approved as a supersedeas bond by—
(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

531 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings in the cases of William A. Stuart and others *vs.* The Greenbrier White Sulphur Springs Company and others, and The Greenbrier White Sulphur Springs Company and others *vs.* William A. Stuart and others, and William Knabe & Company and others, who sue, &c., *vs.* The Greenbrier White Sulphur Springs Company and others, now on file and of record in my office.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Parkersburg, in said district, on this 18th day of August, A. D. 1888.

L. B. DELLICKER,
Clerk Circuit Court United States, District of West Va.

532 At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in and for said district, on the 15th day of February, A. D. 1888, the following order was made and entered of record, to wit:

WILLIAM A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO.

THE GREENBRIER WHITE SULPHUR SPRINGS CO.
vs.
WILLIAM A. STUART and Others.

and

WILLIAM KNABE & CO., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO.

} In Chancery.

Upon motion of Wm. A. Stuart, plaintiff in one and defendant in the second of these causes, an appeal is allowed him from the final decree entered in these causes on the 11th day of February instant, to operate as a supersedeas, upon the said William A. Stuart, or some one for him, giving bond with good security, to be approved by one of the judges of this court, in the penal sum of forty thousand dollars, conditioned according to law.

And on another day, to wit, on the 22d day of August, 1889, the following bond was filed in the clerk's office of said court:

Know all men by these presents that we, W. A. Stuart and Henry C. Stuart, are held and firmly bound unto The Greenbrier White Sulphur Springs Company in the full and just sum of forty thousand dollars, to be paid to the said The Greenbrier White Sulphur Springs Company, certain attorney, executors, administrators, or
533 assigns; to which payment, well and truly to be made, we

bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit depending in said court between William A. Stuart, plaintiff, and The Greenbrier White Sulphur Springs Co., defendant, and The Greenbrier White Sulphur Springs Co., plaintiff, and William Stuart and others, defendants, and Wm. Knabe & Co. and others, plaintiffs, against The Greenbrier White Sulphur Springs Co., defendants, a decree was rendered against the said William A. Stuart and others, and the said William A. Stuart having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Greenbrier White Sulphur Springs Co. and William Knabe & Co. and others, citing and admonishing them to be and appear at a supreme court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said William A. Stuart shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W. A. STUART. [SEAL.]
(Signed) H. C. STUART. [SEAL.]

Sealed and delivered in presence of—
L. B. DELLICKER.

Approved by—
(Signed) J. J. JACKSON,
U. S. Dist. Judge.

Aug. 22nd, '89.

534 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing are true copies of such orders and papers as were required by the appellant, Wm. A. Stuart, in the cases above cited, the originals of which are now of record and on file in my office.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

In testimony whereof I hereunto set my hand and affix the seal of said court at Parkersburg, in said district, on this 7th day of January, A. D. 1890.

L. B. DELLICKER,
Clerk Circuit Court United States, District of West Virginia.

Endorsed on cover: West Virginia C. C. U. S. No. 159. Johnson N. Camden, appellant, *vs.* William A. Stuart, W. W. Gordon & Isaac H. Carrington, trustees, *et al.* Filed October 6, 1888. No. 643. William A. Stuart, appellant, *vs.* The Greenbrier White Sulphur Springs Company. Filed January 14, 1890.

SUPREME COURT U.S.
FILED,
OCT 3 1891
JAMES H. McKENNEY,
CLERK.

Notes of Argument for Appellant.

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1891.

No. 159.

JOHNSON N. CAMDEN, Appellant,

versus

WILLIAM A. STUART, W. W. GORDON, and ISAAC H. CARRINGTON, Trustees, et al.

Appeal from the Circuit Court of the United States for the District of West Virginia.

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1891.

No. 159.

JOHNSON N. CAMDEN, Appellant,

versus

WILLIAM H. STUART, W. W. GORDON, and ISAAC H. CARRINGTON, Truestees, et al.

NOTES OF ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

The Original Bill was filed on the 10th day of April, 1883, and is a creditor's bill to ascertain liens upon the property of the defendant Company praying for an order of reference to a Masetr to ascertain such liens; further, who were stockholders of the defendant corporation; the number of shares owned by each; the par value of the stock, and the amounts due and unpaid by each of said stockholders; that the property be sold to pay the liens thereon; for the appointment of a receiver and general relief.

It will be seen by reference to this bill, that the stockholders, as such, are not made defendants; that no fraud is charged against them in the management of the property, nor is there any relief prayed for as against them.

The second bill in the record mentioned is a petition treated as a bill, filed September 3rd, 1885, in which the petitioners claim that they are creditors of the defendant corporation in the sum of $518.63, with interest thereon from the 22nd day of June, 1882, which they had proved before the Commissioner in the first cause.

The bill recites that the defendant Company was incorporated under its charter of date, 6th December, 1880, with a capital of $150,000, divided into 1,500 shares, and that the shares were owned by Wm. A. Stuart 375 shares, Geo. L. Peyton 375 shares, H. M. Mathews 375 shares, J. N. Camden 188 shares and W. P. Thompson 187 shares: that $50,000 had been subscribed and paid in cash, and that the corporation was organized on the 29th day of December, 1880.

The bill further recites that the stockholders claimed to have further paid on their subscriptions prior to December 6th, 1880, the sum of $25,000, and charges that the said stockholders did not pay the amounts subscribed by them at any time whatever, and that $75.000 of their stock subscriptions still remain unpaid.

The bill further recites that the defendant, Wm. A. Stuart, purchased the White Sulphur Springs property, under a sale made by the Commissioners appointed by the District Court of the United States for the District of West Virginia, at which sale he purchased nothing except real estate, without furniture or other equipments necessary for carrying on the Hotel for the accommodation of the public.

That the said purchase was made under an arrangement had with the other stockholders; that he, the said Stuart, with the other stockholders, and prior to the organization of said corporation, took possession of the property, proceeded to purchase furniture and other necessary equipments for the place and business, and to add permanent improvements to said real estate, thus enhancing, consider-

ably, the value of said property, and that they agreed to operate the said property, so permanently improved and equipped as a watering place.

Alleges that all the profits in operating the property had been absorbed in improvements on the property, purchase of supplies, furniture, &c; that at the end of the season they were heavily in debt; that some of the debts now due were some of the debts created during the season and left unpaid; that they carried on the business during the season of 1881, and at the end of the season was still more heavily in debt, and continued the business during the season of 1882, when the Company collapsed and became wholly insolvent.

It is further stated that the defendant, Camden, a few months after the organization, and before the season of 1881 commenced, sold his interest in said property to R. A. Lancaster, of Richmond, Va., and F. O French, of New York City.

The petition then prays that all proper orders be made for the purpose of securing the rights of the petitioners against each and every one of the defendants as to a Court of Equity may seem right, in respect to any subscription by any party to any of the stock of the stock of said Company mentioned therein and for other relief. (Record page 188.)

The Court's attention is directed to this petition, in which J. N. Camden is for the first time named a defendant. There is no charge in the petition of fraudulent conduct upon the part of the defendant Camden, or upon the part of his co-defendant stockholders, nor is there any charge of mismanagement of said stockholders, which in law would amount to fraud.

As to said original stockholders, the charge is that they had not paid in full for their stock.

These causes were originally referred to D. C. Gallaher as a special commissioner to report upon several matters especially referred to him, and among other matters, he was required to report whether the stockholders heretofore named, had paid in full, their stock so subscribed by them under their said charter.

In answer to this reference the said Commissioner on this point, held that all of the original stock of $150,000 was paid up.

See Commissioner Gallaher's second report, Record, page 102.

The Court is further referred to same report, Record, page 100, to whom stock certificates were issued, wherein it appears that shortly after the organization of said corporation, the defendant, Camden, had sold all his interests in said company to R. A. Lancaster, to whom was issued the certificate for the stock of said Camden, he, Lancaster, to assume all liabilities in relation thereto.

Upon the filing of the report of Commissioner Gallaher, for reasons appearing to the Court the causes were referred to W. J. Leake, Esq., of Richmond, as Commissioner, to report on the several matters contained in said reference, among which, said commissioner was directed to report as to whether said original stockholders had paid in full for their stock. Record, page 202.

In answer to this point, Commissioner Leake did ascertain and report that the said defendant, Camden, had not paid in full for the stock so subscribed by him, and that there was still due and unpaid on his stock subscription the sum of $9,495.12, with interest thereon from December the 30th, 1880. Record, pages 221 and 222.

Upon the filing of this report appellant Camden filed his petition praying leave to except to the report of Commissioner Leake so far as the same ascertained that he was indebted upon his stock. Record, page 329. Which leave was granted by the Court. Record,

page 333. The exceptions filed by appellant Camden, set out in Record, page 332.

Appellant Camden filed his answer to complainants' bills, in which he sets out fully his connection with the defendant company, and the manner in which he paid for his stock. Record, pages 338 and 339.

Upon the final hearing the Court, in its decree, Record, page 349, adjudged, "Fourth, that the exceptions taken and filed by W. A. Stuart and Johnson N. Camden, respectively; to the report of Commissioner W. J. Leake, so far as it ascertains and reports a liability upon the original stockholders of the defendant company for unpaid stock, be and they are hereby overruled." The decree then proceeds to ascertain the amount of the liability of such of said stockholders, fixing the amount of appellant Camden's liability at $9,495.12, with interest from December 30, 1880, until paid.

From so much of said decree as ascertains appellant Camden's liability for unpaid stock, and directs the payment thereof by him, he has appealed to this Court.

The first question to be considered is, did Mr. Camden pay in full for his stock, or in other words, was the original subscription of $150,000 to the capital stock of the defendant corporation paid in full by them.

In order to ascertain how the fact is, it is necessary to see what the stockholders did, at the time of, or prior to the organization of said Company.

It is conceded in the petition, Record, page 188, that the defendant, Stuart, in his purchase, "only obtained the real estate, without furniture or equipment necessary to carry on the hotel business."

That after his said purchase in March, he associated the other

original stockholders with him, and proceeded to make purchases of furniture and other necessary equipments for the place and business, and to add permanent improvements to said real estate, "thus enhancing considerably, the value of said property "

The proofs in the cause show that the value of the furniture purchased amount to about the sum of $53,834.78, and the permanent improvements on the real estate to at least $42,000, making an outlay of about $95,834.78. Record, page 232.

This amount was paid out by Stuart and his associates, of whom Camden was one. prior to obtaining the charter, and represented a cash investment in addition to the real estate as originally purchased, and in the language of the petition, "Thus enhancing considerably its value."

It was in view of these facts, the said corporation after the said contract of purchase so made by the said Stuart, of the White Sulphur Springs property, had been assigned to the said company, and thereupon the said Company passed the following preamble and resolutions:

"WHEREAS, since said purchase, said Camden and Peyton and their associates, have made large permanent improvements on said property, and have refurnished and refitted the hotel situated thereon, and have placed in and upon said premises a large amount of personal property; Therefore, be it

"*Resolved*, That in consideration of the the transfer to this company of the contract with said Stuart, and also of all the improvements, furniture and personal property of all descriptions placed by said J. N. Camden and his associates upon said premises, this company do agree for the consideration aforesaid, to accept the same in full payment of the unpaid balances due by J. N. Camden and . . . . . on their several sub-

scriptions to the Capital Stock of this Company as set forth in the Certificate of Incorporation."

Second: "*Resolved*, That when said transfers of the contract and property aforesaid *is* duly made to the company, there shall be issued to the parties named in the foregoing, certificates of fully paid up stock for the amount which they have respectively subscribed, as set forth in the Certificate of Incorporation aforesaid." See exhibit "I. K. C.," Record, page 340.

It is not denied that the defendant Company entered into possession of all the property mentioned in the foregoing resolutions, "and proceeded to purchase furniture and other necessary equipments for the place and business, and to add permanent improvements to the real estate, thus enhancing considerably the value of said property," which said purchase of furniture, betterments and improvements, petitioners admit amounted to at least the sum of $95,831.78.

This was, in part, the consideration on which the said company acted, when it declared "that this company do agree, for the consideration aforesaid, to accept the same in full payment of the unpaid balance due by J. N. Camden and . . . . . (meaning the other stockholders). Was this act of the said company, valid in law? It is submitted that it is.

The Court's attention is directed to the fact, that the corporation by the assignment of the contract of Stuart, to it, obtained the benefit of his purchase of the real estate, together with all the improvements and betterments made thereon, as also the large amount of furniture and other personal property, and also the services of said Stuart, Camden and their associates, for nearly one year in the improvement and management of said property so as to render it better adapted and more valuable to be operated with profit as a place of public resort of the kind for which it was used.

It is not contended that this action on the part of stockholders was fraudulent. Being *bona fide*, and without fraud upon their part, it is valid, and we submit, must be sustained, inasmuch as said transaction was a fair business transaction, between the parties who had a right to enter into it, long prior to the creation of the debt of the petitioning creditors.

The stockholders had paid on their stock $50,000 upon obtaining their charter; had paid about $95,834.78 in furniture and improvements, etc., as before stated, and in addition thereto had assigned the benefit of their purchase of this large and valuable Springs property, all of which was accepted and appropriated by the corporation to its use, immediately upon its organization and commencement of business. And all this, as before stated, was long prior to the contracting of the debt of the complaining creditors.

The stock is, none the less, paid up in full, because the property assigned, as appears by the resolution taken in payment, has proved to be of less value than was fixed upon at the time it was accepted by the company.

To invalidate the acceptance of said property as payment in full, the creditors *must prove*, not only that the property was *overvalued*, but, that such *overvaluation was intentional and fraudulent.*

The Courts will treat that as payment which the parties (the stockholers and the corporation) have agreed should be payment, unless a fraudulent intention is shown.

If it be suggested that the stock could not be paid for in property at all, or in anything else than money, and that the attempt to do so was a fraud, even this, on subsequent creditors, cannot be sustained.

The authorities clearly and plainly support the defendant stockholders in this position.

Thompson's Liabilities of Stockholders, Sec. 134, says:

"The discussion resolves itself into the following conclusion. A corporation may take *in payment* of its shares, any property which it may lawfully purchase. Such a transaction is not *Ultra Vires*, or void, but, it is valid and binding," on other stockholders and on the corporrtion unless there be fraud. And when no fraud is shown, the Courts *as against Creditors*, "Will treat that as payment which the parties agreed should be payment."

In same authority, Sec. 128, there is a reference to a strong case from the Supreme Court of Pennsylvania. See Note (1) to said section for opinion of the Court. Carr vs. Le Fevre, 27 Pa. St., 413.

And a still stronger case is Phelan, Ass'nee vs. Hazard, 6 Cent. Law, J., p. 109. This was a case before Judges *Dillon* and *Treat*, U. S. Cir. Court (Missouri) in which *the directors* elected at the organization of a corporation owned certain real estate, supposed to be mining property, and conveyed the same to the corporation of which they were stockholders, and being directors they received the conveyance of such real estate from themselves in payment of their capital stock. The Court holds this a good and valid payment against *subsequent creditors*, although it turned out to be of little or no value, and the corporation proved to be insolvent. See also,

119 U. S., p. 343, Dec. 6, 1886. Coit, Adm. &c. vs. North Carolina Gold Amalgamating Company and others.

Syllabus.—"Where the capital subscribed is settled for by the transfer to the corporation of personal property belonging to the subscribers, at an honest valuation, fairly made, and agreed upon between them, they cannot be held individually liable to creditors because the value of the property, estimated in the light of subsequent events, does not equal the amount at which it was received by the corporation."

This was a bill filed by a judgment creditor of a corporation against the corporation and its stockholders praying for a decree for the payment by the stockholders of his debt. "Bill dismissed."

And a still stronger case is Coffin vs. Ransdell, Receiver.

N. E. Reporter, Vol. 11, No. 1, p. 20, April 22, 1887.
Supreme Court of Indiana.

This was a case of a corporation for the manufacture of agricultural implements. There were three stockholders and they were also the directors. Two of these stockholders had been partners in the same business. The capital stock of the corporation was $50,000 The only payment on the stock was by turning over the assets of the late partnership, consisting of a patent right for a plough, valued at $27,000, some material, estimated at $3,000, bills receivable and credit accounts of the late firm $9,000, and the balance was paid in assets of the late firm, not described, but evidently of little value.

This was claimed by the stockholders to be a payment in full of their stock.

The corporation became insolvent, a receiver was appointed. He, on behalf of the creditors, brought suit against the defendant as one of the corporators, claiming a balance of at least seventy-five per cent of his original subscription.

A demurrer to the petition was sustained and suit dismissed.

The Court holds. Syllabus, part (1):

"Subscriptions to capital stock of a corporation must be in good faith, but need not be paid in cash. Payment, if made and received in good faith, may be either in money, or money's worth."

The law as contended for on behalf of the defendant stockholders is further fully supported by the most recent authority on the subject.

See Cook on the Law of Stock and Stockholders. Sections 33 and 34, (and notes 1 and 2).

Section 34 says: "Later cases (in New York) however, as in *other states* have *firmly* established the principle that not only must *proof* be given that there was an over-valuation of the property or services rendered, but, proof also must be given, that such over valuation was intentional and consequently fraudulent.

The property is not to be considered so over-valued merely because subsequently it turns out to be so. The various circumstances under which the valuation was made should be considered in determining the *bona fides* of the transaction."

See also section 44, where the same rule is laid down plainly and explicitly.

In addition to the resolutions hereinbefore referred to, the petition of Wm. Knabe & Co. refers to the resolution to be found in the minutes of the stockholders, wherein it entered that "On motion, the stockholders were called upon to pay in their respective shares of the $4,000, heretofore agreed to be paid, which when paid will be in full of the capital stock of $150,000, provided as full paid up stock" Also resolution following See resolutions of company referred to in commissioner's report. Record, pages 99 and 100.

Upon this question as to the payment in full for their stock, by the stockholders, the Court's attention is called to the deposition of the defendant, Wm. A. Stuart, taken before Commissioner Gallaher, page 159 of record, also pages 229 and 230 of said Stuart's deposition before commissioner Leake, in which it fully appears that the stockholders paid from time to time cash on their stock subscriptions, amounting to the sum of $75,000 to $80,000.

It further appears by the balance sheet made out by the bookkeeper, Morrison, who kept the books of the defendant company during the season of 1880, and which balance sheet is filed with

and referred to in the report of commissioner Leake, that the net profits of the season for the year 1880, was the sum of $56.488.91, (record, page 274), and this sum, as appears by the deposition of said Stuart, was, by the directors of said company, applied to the payment of the residue due upon their stock. (The stockholders being the directors of the defendant Company.) Record page 100.

Could these earnings be so applied? We think they could. If the money was earned, it belonged to the stockholders. They could have drawn out the same and paid the amount thereof to themselves as dividends upon their stock. If they could have appropriated the net earnings in payment of dividends, they certainly had the right to leave them in the possession of the Company, and apply the amount so left in payment of stock.

"The capital of a corporation may be contributed in the form of property to be used in a company's business, or of services for which the corporation would be entitled to expend its funds."

Morawitz on Corporations, Secs. 428 and 425 6.

A contribution of property or services by a shareholder would undoubtedly discharge his obligation to creditors in respect of the amount of capital to be contributed by him to the extent of the value of the property or services: and if the property or services were valued by the agents of the corporation in good faith at a certain sum, creditors would be bound thereby, though the valuation may prove to be excessive."

Morawitz, Secs. 825 and 826. Citing 14 Fed. Rep. p. 12.
23 Id. pp. 232 and 244.
Phelan vs. Hazzard, 5 Dillon, 45.
Steacy vs. Little Rock R. R. Co., 5 Dillon, 376, and other cases, including Carr vs. Le Fevre, hereinbefore referred to.

Applying the principle as laid down by Morawitz to this case,

was not the appropriation of the net earnings of the company equivalent to the payment of their stock pro tanto, by services rendered? Whilst it is true that the stockholders may not have rendered their personal services to produce these net earnings, yet they were the proceeds arising from their investment, including the services of others employed by them in lieu of their personal service.

The net earnings were the property of the stockholders, and being their property could properly be disposed of by them.

In the United States stock or scrip dividends are common. See

State vs. B. & O. R. R. Co., 6th Gill. 363.
Earp's Appeal, 28 Pa. St., 368.
Boone on Corporations, sec. 125.

And generally where the Company has earned a dividend, the directors may elect to retain the moneys so earned for proper corporate purposes, and in lieu thereof issue to stockholders a corresponding amount of stock.

Boone. Sec. 125 and cases cited.

If new stock could be issued for dividends earned, with as much propriety, could such stock dividends be applied to the payment of stock already taken or subscribed. In fact this is a rule frequently adopted by some corporations when stock notes are given, and the earnings of the corporation applied in reduction of such notes.

It is, however, contended, that there were no such earnings to be applied in payment of stock The Commissioner, Leake, not satisfied with the balance sheet as furnished by the book-keeper, Morrison, referred the books to an expert, "Boudar," as he reports, and upon an examination by this expert, and reforming the balance sheet, the expert arrives at the conclusion that the sum of $56,488.-91 was not earned by the company during the season of 1880, but,

instead thereof, the net earnings were $26,501.23, which he says, the face of the books show. See Boudar No. 1, filed with report. (Record, page 286.) But in Boudar No 2, he finds the correct amount of profit to be, after reforming the entries as he claims they should be, the sum of $4,251 68, leaving as unpaid on said capital stock the sum of $76,748.32. (Record, page 293) Said sum of $4,251.68 the commissioner applied in payment of the stock still due and unpaid, and finds that all of said stockholders were in arrears, this defendant (Camden) being in arrear on his said stock the sum of $9,441.46, with interest from December 30, 1881.

See Commissioner Leake's report, record, 222.

Commissioner Leake sets aside the balance sheet of Morrison, who kept the books at the time; who was acquainted with the whole business, what was and what not proper items to go into the expense account to make a proper balance sheet, a man in every way competent, honest, disinterested, and takes the conclusions of his expert, who knew nothing of the business or its details, who never saw the books until submitted to him, and who made up a balance sheet therefrom, without the aid of, or information from the man who kept them, and adopts the conclusions of the expert.

We submit that the Commissioner erred in his report, in finding from the evidence of his expert, that said stockholders had not paid in full for their stock, and that his conclusions are not sustained either in law or in fact.

We submit, that the court cannot hold the stockholders liable for *a balance as unpaid on their stock*, as the commissioner has assumed to do in his report, and as would seem to be the purpose of the plaintiffs' bill.

It appears from the pleadings and the proofs, that what was done by the stockholders and directors of the defendant company, relating to the payment of their stock subscriptions, was done in

good faith, and without fraud; that so far as they acted, they supposed that they were acting within the scope of their authority, and that they paid on said subscriptions in money, or money's worth, and as to such payments made in other things than money, if over-valued, such over-valuation was not *intentional* and *fraudulent*.

All the stockholders transferred to the corporation what was equivalent to money in full payment of their stock, and the corporation accepted the same, and agreed that the stock was paid up, and so entered on its books, at the date of the transaction, viz: on Dec. 29, 1880.

See Minutes of the Corporation. Record, page 99.

This agreement is an entirety. Like any other contract sought to be annulled and set aside, it must stand or fall as a whole. The Court cannot make a contract for the parties. The Court cannot say it will treat what has been done as a partial payment, and hold the stockholders for a balance. If it was a payment at all, it was a payment in full. This was the contract between the stockholders and the company, and the court cannot change it. The court must affirm it, or disaffirm it in toto. There is no middle ground.

The Court cannot interfere with it at all, unless the actual and agreed payment by the transfer and acceptance of property, as shown, was intended to defraud the creditors of the company,—creditors that did not then exist, for the complaining creditor's debt did not then exist. And this the court cannot do by halves, or partially, but, if it interferes at all, the contract of payment as made between the stockholders and the company, must be accepted and adopted in whole, or rescinded—set aside—in whole. And the latter it cannot do, unless it can also restore the parties to the condition in which they were when the contract of payment was made and executed. Is it in the power of the court to do this? Has not the money and property turned over in payment of stock, been

consumed and disposed of? And is it not gone beyond the reach of the court?

Cook on Stock and Stockholders, sec. 36, says: "When it has been established that the over-valuation of the property taken in payment of stock was intentional and fraudulent and the transaction invalid, the questions then arise what liability has been incurred, who is liable and what is the remedy?"

As regards the persons receiving the stock for property taken at an over-valuation, fraudulently made, the contract may be set aside for fraud, thereby returning to him the property, and requiring from him the stock, or its actual *market value, but he is not* liable for the *par value* of the stock, less the actual value of the property received from him."

And see same authority, sec. 44, to same effect, concluding as follows:

"He cannot be made liable for the par value of the stock, less the value of the property."

And the same authority, sec. 46, says: "Where the issue (of stock) was for property taken at an over valuation, the rules in America and England are the same. The transaction stands, and no liability is incurred, unless an intentional over-valuation is proved."

And sec. 47, of the same authority is specially called to the attention of the court.

It sustains the position taken by the defendant fully and beyond question.

a. The shareholders who paid in property cannot be held for an alleged balance.

b. The transaction is to be upheld as valid, unless, there is an over-valuation of property shown to be intentional and fraudulent.

c. When the fraud is proved, the contract is to be treated as other fradulent contracts, viz: adopted in toto, or rescinded in toto, and set aside: and each party to be restored to their original position etc., etc.

It may be contended that the Constitution of West Virginia, Art. 11, Sec. 2, has fixed their liabilities in declaring Stockholders liable for "The amount of stock subscribed and *uupaid and no more.*"

This is not controverted, but if it was paid up, then there is no liability; and these defendent stockholders insist that their stock is paid up in full.

Section 2, Chap. 54 of Code of West Va., Subdivision 3 of said Section provides that Companies may be incorporated "For establishing hotels and Springs Companies."

Section 62, Chap 53 of the Code provides for the quantity of land such Springs Company may hold, the last clause of said section providing "Any such Springs Company now owning or occupying the real estate of a former Springs Company, may take, hold and use the same notwithstanding the quantity thereof shall exceed fifteen hundred acres."

The land now owned and occupied by the defendent corporation, is the same real estate of the former Springs Company, owned by said Company for a great number of years, and is within the above exception.

It follows therefore, from the power granted to the defendant Company to take and hold real estate as provided in Sec. 62, of Chap. 53 of our Code, that the rule as laid down in Thompson's Liabilities of Stockholders, Sec. 134 hereinbefore referred to is correct.

"A corporation may take *in payment* of its shares any property which it may lawfully purchase.

If the defendant Company could lawfully purchase the real estate, which cannot be doubted, it may lawfully receive the same in payment of its stock, and when so received at the prices agreed on, it is valid and binding, and in the absence of fraud "The Courts as against creditors, will treat that as payment, which the parties agreed should be payment." "Thompson" id.

The promoters of the corporation are allowed to exercise some discretion in deciding what property they may purchase or take in payment of stock: and if what they do in this regard appears to be reasonable and bona fide, the court will not not set it aside or interfere with it. It comes back to the proposition, that if not fraudulent, the contract as made must stand as a whole.

But at all events, the defendants in this collateral proceeding raise the objection.

If the charter of the corporation has been violated, the questions can only be raised in the name of the State by *quo warranto to forfeit* the charter. This position is sustained by the authorities.

The Bank vs. Portiaux. 3 Ran. 136.
Crump vs. U. S. Mining Co., 7th Gratt.

(See 1st Syllabus, p. 352. 1st Instruction to Jury, p 360, refused and reasons of court for refusal, and this approved by the court, p. 372.

To same effect:

National Bank vs. Mathews, 98 U S., 625.
National Bank vs. Wheeling, 103 U. S., 99.

Which holds in substance, that acts by a corporation prohibited by its charter, but not coupled with a forfeiture, are not necessarily void, but are good as to the parties and the creditors. The only way to take advantage of them is in the name of the government by *quo warranto* to forfeit the charter.

See also 24 Howard, 283. Angell & Ames, sec. 636.

In addition,—

The report of Commissioner Leake is erroneous is this, that he finds the defendant, Camden, indebted on his stock in the sum of $9,441.46, when said report further shows that the said Camden was compelled to pay and did pay, by virtue of a decree rendered against him and his co defendants, Stuart and others, in the Circuit Court of Augusta County, Va. in favor of H. M. Bell, receiver, the sum of $10,284.56, (see page 217 of record), which suit was to recover the price and value of furniture in the hotel of the defendant company, and of which the said company received the benefit, and which said furniture is a part of the property proceeded against in this suit. See deposition of Wm. A. Stuart, taken before commissioner Leake. Record, pages 228-229.

It must be conceded from the authorities referred to, that the stockholder had a right to pay his subscription in property.

Here was property purchased for the use of the Company; property which the Company required to enable it properly to carry on its business, and which the Company actually did use, and still remains as a part of its property applicable to the payment of its debts, and has since been sold as a part of the property of the corporation to pay its creditors.

It is true that the defendant, Camden, supposed that when he parted with his interest in the defendant company, that said company would be liable for and bound to pay for this furniture. It was held, however, in the suit above mentioned, that the purchase was made by him and his associates on their individual responsibility, and that they should be held liable therefor. The property having been purchased for the company, and used by it, and its creditors having seized the same as part of the assets of said company, and having been paid for in part by this defendant, to the amount of said sum of $10,284.56 out of his individual money, equity ought to

relieve him on his stock for any sum unpaid by him to said amount, if the Court should be of opinion that the position of this defendant herein as to the payment in full of his stock is not well taken. This defendant by said transaction, is not a general creditor of the corporation as reported by the commissioner. The payment so made was on and entered into the purchase of the property assigned to the defendant company, by the said Stuart and his associates, and was in part the very property on which the corporation was founded. It was a part of the property that the defendant company agreed to take from the stockholders in payment of their stock. And being such property so received, to that extent was a payment on stock, and should be so held.

If this be true, the commissioner erred in listing the defendant with the general creditors. And upon his view of the case that the stock was not paid should not the same be received in payment of stock?

The commisioner further erred in adopting the balance sheet of the expert, in which is charged certain sums as expenses, as against the net profits, viz: under the head of sources of loss,

Paid on purchase money.....$ 7,670.93
Due..... 13,879.07

Bourdar says the first item was paid on purchase money and charged to real estate in error.

The second item is balance and unpaid on purchase money for the year 1880. Boudar No. 2. Record, page 291.

These items are explained in Boudar No. 1, and is shown to have been made as payments on the real estate, and consequently it is error to charge them to profit and loss. Record, 285.

The commissioner further erred in adopting Boudar's balance sheet wherein he charges $5,507.60 depreciation in value from use,

&c., of furniture, hardware, tools and implements. (Record 291.) The company received the several items composing this item at the agreed price ; they are bound thereby and if over valued, cannot for that reason be now corrected, unless in accordance with the principles hereinbefore referred to, it appears that such over-valuation was intentional and fraudulent.

And of this the company alone can complain, not the creditor.

The company cannot complain of any fraud practiced upon it, by the stockholders, as the stockholders, directors and company, are one and the same body.

Defendant therefore submits that the exceptions, so far as they relate to the commissioner's finding that the stockholders had not paid in full for their said stock, should be sustained, and the court here should ascertain and decree that said stock was paid in full, and should further decree that as to the defendant, J. N. Camden, the decree of the Circuit Court of the United States for the District of West Virginia should be reversed, and the bill should be dismissed, with costs to him.

J. B. JACKSON,
Of Counsel.

H. Holt Edmonds Gordon
Counsel for Camden.

Alex. F. Mathews
Counsel for W. A. Stewart
Appellee No 6 of 3.

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NOTES OF ARGUMENT FOR APPELLEE,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1891.

No. 159.

JOHNSON N. CAMDEN, APPELLANT,

VERSUS

WM. A. STUART, W. W. GORDON, and ISAAC H, CARRINGTON, TRUSTEES, ET ALS.,

Appeal from the Circuit Court of the United States for the District of West Virginia.

AND No. 643.

WILLIAM A. STUART, APPELLANT,

VERSUS

THE GREENBRIER WHITE SULPHUR SPRINGS CO., ET ALS

Appeal from the Circuit Court of the United States for the District of West Virginia.

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WILLIAM A. STUART, APPELLANT,

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THE GREENBRIER WHITE SULPHUR SPRINGS CO., ET ALS

BRIEF FOR THE APPELLEES.

STATEMENT OF THE CASE.

The above titles which were given to their appealed cases by the appellants and the statement of the proceedings in the court below in brief of counsel for the appellant, Camden—no brief having been filed for Appellant Stuart, whose case is identical with that of Camden, except that the judgment against him was for double the amount of that against Camden—are confusing, and must prove an apology for a partial restatement of them here.

The matter before the lower court arose upon a bill in chancery filed by William A. Stuart, who sued in behalf of himself and others, versus the Greenbrier White Sulphur Springs Company, et als., to enforce a mortgage claim against said Company, and upon a petition or bill filed by Wm. Knabe & Co., for themselves and others, against the same company, et als., seeking to have the above mentioned mortgage set aside as fraudulent, null and void; to sell the Springs property for the benefit of the creditors, and enforce the payment of the unpaid subscription to the stock by the stockholders of said company. (See the Knabe bill, record page 188.)

The Greenbrier White Sulphur Springs Company filed its

cross bill to the original or Stuart bill, and by consent of all parties the causes were heard together, as one decree upon the facts could decide the claims of each.

By the final opinion and decree of the lower court the deed of trust or mortgage was decreed to be null and void and the original or Stuart suit dismissed. The court stating of said deed, "It appears to be a mere deal among the present directors and stockholders by which they might secure the company's indebtedness to them, which was otherwise unsecured, to the disadvantage of all other creditors, and is void for that reason. (See Record, pp. 347 and 348.)

The original bill having been dismissed by the decree and no appeal having been taken on any point involved in said dismissal, only the Knabe bill and the Company's cross bill stand, and the only point in these causes now before this honorable court for review is that portions of the final decree which sustains the report of Special Commissioner Leake, that Johnson N. Camden owed $9,495.12 and Wm. A. Stuart owed $18,-937.08 as of the 30th day of Dec. 1880, which several sums bear interest at the rate of six per cent. per annum until paid, and decreed that Stuart and Camden pay the respective sums due by them with interest until paid to the Greenbrier White Sulphur Springs Company. These sums being the unpaid up subscriptions to the capital stock of said company due by Camden and Stuart respectively. (See Final decree Record p. 349.)

It should also be stated here that the Knabe petition or bill was filed Sept. 3, 1885. On October 26, 1885, it was ordered that it be proceeded with as a bill in chancery and process was served on all defendants including Camden, the answers of Stuart and others were filed in due course and the cause matured for hearing. On June 26, 1886, there was an order referring the causes to Wm. J. Leake, Special Comr., that he might, among other things, report on the liability of the stockholders for their unpaid subscription to the capital stock of said company; on July 8th, 1886, notice with copy of decree of reference served on all parties, and publication in Parkersburg *State Journal* for four successive weeks; June 10, 1887, Comr. Leake's report was filed. Nearly two years from institution of suit and one year after order of reference. On August 2nd, 1887, fifty-three days after the filing of the report and of course with no excepuion made before the Master J. N. Camden petitioned the court to permit him to file his answer.

On December 16th permission given by order of court and

on December 17th answer of Camden filed—two years and three months after the filing of the bill. These dates are taken from the record and the reason for setting them forth here will appear when the argument is reached.

That the court may have an intelligent idea of the points in dispute and to be hereafter discussed, it is essential that a short history of the Greenbrier White Sulphur Springs Company during its brief career as established from the volumnious evidence in this suit should first be given. On January 30, 1880, W. A. Stuart, J. N. Camden and Geo. L. Peyton entered into an agreement to form a corporation to be known as the Greenbrier White Sulphur Springs Company for the purchase of the real estate known as the White Sulphur Springs property, consisting of 7,000 acres of land in West Va , and an interest in 2,800 acres adjoining the same in Virginia, all of which it was known would shortly be sold under a decree in the suit of Gay, &c., vs. The G. W. S. S. Co., then pending in the District Court of West Virginia.

It was agreed that W. A. Stuart should purchase said property individually at a price not to exceed $310,000 subsequently at the sale by consent of parties increased to $340,000, and should afterwards sell the same to the corporation when formed for $390,000 and expenses of sale $16,000 or about $66,000 bonus, said Camden to take one-half interest in said corporation with the privilege of disposing of part of his interest to other parties and Peyton and Stuart one-fourth interest in same.

Said Stuart bought said property (see agreement, Min. Bk. p. 823 to 24, also Stuarts depos. Record pp. 166 & 167)at the judicial sale for the sum of $340,000.

A charter was applied for and granted, but as the capital stock was put at $500,000 no organization took place under it, but said parties took possession of said Springs property and proceeded to operate it as a watering place during the season of 1880 under the style of the G. W. S. S. Co.

On December 6th, 1880, a new charter was granted said parties, and the application therefor sworn to by all of the corporators contained the following statement: "And for the purpose of forming said corporation we have subscribed to the capital stock thereof the sum of $150,000 *and have paid in on said subscription $50,000*, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one million of dollars in all. The capital so subscribed is

divided into shares of one hundred ($100) each and held by the undersigned respectively as follows, that is to say, by W. A. Stuart, 375 shares; G. L. Peyton, 375 shares; J. N. Camden, 188 shares; Wm. P. Thompson, 187 shares; Henry M. Matthews, 375 shares." (Extract from charter, Min. Book, p. 5., see also record p. 230.)

On December 29, 1880, the company was organized under this last charter at Barnum's hotel in Baltimore, Md., and all five stockholders were elected directors. W. A. Stuart was elected president, and by-laws adopted for the government of the company. On the day following the board of directors met at the same place and passed the following resolutions:

"On motion, stockholders were called upon to pay their respective proportions of the $4,000 heretofore agreed to be paid, which, when paid, will be in full of the capital stock of $150,000 provided as full paid up stock." And no other resolution was then passed as is shown by the record of the minutes and the testimony of Stuart and Peyton. (See Min. Bk. p. 13, also Stuart's dep p. 160.)

"On motion, the president and secretary were authorized to issue to the various stockholders certificates to the amount of $150,000 of the capital stock of this company in proportion to their respective subscriptions and as in full payment of the same."

"On motion, the capital stock was increased from $150,000 to $300,000." See Minute Book of the company page 13. (Pages 15 and 16 of said Minute Book have been cut out and cannot be found.)

Several months afterwards the capital stock was, by another resolution, increased from $300,000 to $400,000.

The Springs property passed into the possession of the corporators after the organization of the company, though the conveyance by Stuart and wife to the company reserving the vendor's lien to secure the $390,000 of purchase money was not executed until a long time thereafter, namely, on the 17th day of March, 1882. (Record p. 78.)

The new corporation assumed the obligations of the copartnership and simply continued the business as though no change had been made.

During the season of 1880 the copartnership claimed to have made $56,000 of profits; but the statement of H. B. Boudar, the expert employed by the commissioner, shows that about $4,000 was actually made, and this without taking into consideration a large number of outstanding notes, etc., of the

company. See Boudar statement No 2, Record p. 293.) During the season of 1881 the balance sheet of the company showed a profit of a little less than $10,000, while on the contrary, on Dec. 1st, '81, there were outstanding notes of the company due and unpaid for $114,294.39. This sum did not include the open account indebtedness of the company. On April 15, 1882, the notes of the Company outstanding and unpaid amounted to $172,046.18. (See Boudar's dep. record p. 263.)

The season of 1882 was a failure, and early in the fall of 1882 the company collapsed, owing, including the vendor's lien, about $700,000 (see sum of indebtedness reported by Commissioner Leake amounting with interest to $891.862.16 record p. 224.)

On the 9th day of February, 1882, the board of directors met in Richmond, Va., and ordered "that coupon bonds to the amount of $200,000 at thirty years, reserving the right to retire them after fifteen years with interest at six per cent., payable annually on the 15th of September at the Merchant's National Bank in Richmond, be sold at not less than fifty cents on the dollar and also $100,000 of the stock to be sold at par; the two, stocks and bonds to be sold together, that is, each purchaser of $100 worth of stock at par to take bonds to the amount of $200, at not less than fifty cents on the dollar; and that said bonds be secured by a deed of trust on all the property of the company (real and personal) with the exception of the lot containing not more than two acres near the depot, and to the end that said trust may be given, it is ordered that the president take the steps to get in the legal title to the real estate of the company, and that J. H. Dooley and John P. Branch (who were stockholders and directors present at the meeting) be appointed a committee to have said bonds prepared and printed in sums of $500 each."

"And it is further ordered that the president employ W. W. Gordon and J. H. Carrington as attorneys for the company, to procure said title and prepare said trust deed.

"It is further ordered that the present stockholders shall have the privilege of taking said stock and bonds in amounts proportioned to the stock now held by them, and should any of stockholders decline to buy, then the others shall have the right to take their shares, and only in the event that any of said stock and bonds are not taken by the present stockholders shall they be sold to outside parties." (Minute Book, pp. 37 and 38.)

On April 6th, the stockholders met ~~me~~ at the White Sulphur

Springs and passed resolutions confirming the action of the Board, and, also fixed upon May 1st, 1882, as the date when the option to take said stock and bonds reserved to the stockholders of the company should expire. (See minute-book pp. 100 to 102.)

At the meeting of the board, on April 29th, it was—

Resolved, "That the president, notify those stockholders not present that at the meeting, of their right to take said stock and bonds as provided at the meeting April 6th, 1882, of the stockholders, and that such right must be exercised by the 15th day of May, 1882, to which date the time fixed by said meeting is hereby extended.

2d. Resolved, "That the president, at his earliest convenience, place in the hands of John P. Branch $50,000 of the coupon bonds of this company, and $25,000 of the stock of the company, and that he deliver to William A. Stuart a like amount of the stock and bonds of said company, to be by them placed or disposed of in accordance with resolution heretofore adopted." (Minute-book pp. 42 and 43.) which he has purchased at about 50 cts on the dollar.

Stuart received his $50,000 of bonds and $25,000 of stock, and undertook, without authority from the board, to pay for them with $50,000 of the obligations of the company, upon which he was individually bound as endorser.

Branch received his $50,000 of bonds and $25,000 of stock, and undertook, without authority from the Board, to hypothecate $35,000 to the Merchant's National Bank, and Thomas Branch & Co., being president of the bank and an active partner in the firm, for debts due by the company to them. He also, in direct violation of the resolution of the board, claims to have transferred to J. W. Kerr, on April 29th, 1882, a person without means, his brother-in-law and a clerk in his employment, $20,000 of bonds and $10,000 of stock. having previously taken, in addition to the $50,000 of bonds aforesaid; a large number of unsold bonds, all of which he afterwards returned except $5,000. He also took, in addition to the $25,000 of stock, the $10,000 of stock transferred to J. W. Kerr,

This brief history of the transactions of this company all based upon facts proven speaks for itself, and shows the company to have been a bubble from its inception to the date of its collapse. During its brief existence it was sustained solely by credit, and despite this fact, the officers and stockholders showed on utter disregard of the rights of the creditors, which has seldom been equalled. Not only did they pay up the origi-

nal subscription of $150,000 by a resolution of the Board, and $4,000 or rather $3,000, for it is admitted that Matthews never paid his $1,000, but after a reckless expenditure of money, goods, and material of others for two years, and during a part of the time as partners, they executed a deed of trust, the pretended purpose of which was to pay off the floating debt, but the real purpose of which the action of the parties demonstrates to have been to prefer the debts to themselves by the company or for which they were personally liable.

Neither Branch or Stuart ever paid one dime into the treasury of the company on account of the bonds secured by said deed of trust. On the contrary, Stuart undertook to pay with debts due him by the company that he had bought up at a discount, and Branch undertook to deposit his as colateral security for the debts due his bank and his firm by said company, without any authority from the stockholders or the Board of Directors to hypothecate any of said bonds; both thus endeavoring, by means of the deed and these bonds to secure a preference and get stock thrown in as a bonus, as Stuart naively testifies in the following language. "The theory was that the coupon bonds were put at fifty cents on the dollar and stock at par, in the outset. The reason for this I think was that the law of West Virginia, forbids the disposition of stock at less than par, but practically I regard myself as paying par for the bonds, with the stock given as a bonus." (Record p. 123.)

Not only did they intend thus to secure this preference, but they were to have it to the exclusion of all outside parties up to a certain date, namely, the 15th of May, 1882.

The decision of the court sustaining Comr. Leake was that this effort to prefer themselves to the exclusion of other creditors was null and void, and that even as to Kerr, who claimed to hold $10,000 of said bonds as assignee of John P. Branch and as a bona fide holder for value and without notice that, the pretense was too flimsy. the facts show that Kerr, Banch's brother-in-law, was only a man of straw and Branch the real man.

The only questioned raised by the exceptions to the commissioner's report, and which is now in controversy, is tne liability of the original subscibers for their unpaid up subscription to the capital of the stock of $150,000.

Let us now examine the evidence and law on this question,

I. The liability of the original subscribers for their unpaid subscriptions to the capital stock of $150,000. Let us look to the evidence of Stuart himself in explanation of the re-

solution by which the $150,000 of stock was paid up with $4,000. Stuart says: "That $75,000 or $80,000 had been paid in money early in the season of 1880, I regarded ourselves as jutified in adding to that the profits of the season of 1880, which Col. Peyton (the superintendent) reported as something over $56,000,

We also regarded the contract made between ourselves, in January, 1880, before referred to, together with the loss of time and trouble to which we were subjected, as constituting the elements of value to consider in selling this property to the joint stock company. Mr. Camden, who was familiar with the West Virginia corporation law, and to whom we referred, was very confident of the legality and propriety of the course we adopted in declaring the capital stock of $150,000 subscribed by us fully paid up.

We desired to further improve the property and to pay off the debt of the company, and with that view it was thought advisable to bring in new capital.

Mr. Camden said that to bring them in that, they—the new stockholders—would require that they be let in on the ground floor. After summing up the amount paid in, and other considerations mentioned, he said that by payment of $4,000 in addition, the stock of $150,000 would be fully paid up, *and that would be ground floor enough.* Camden then mentioned the names of Huntington, and others, whom he thought he could get in. (Stuart's deposition, record page 160.)

"There were a number of unpaid debts not included in the estimate of profits for the year 1880. Bashor's debt, amounting to some $7,000, remained unpaid, and a good deal of the $30,000 due the Bank of Lewisburg was also unpaid." (Stuart's deposition, record page 162.)

Stuart testifies that other notes amounting to $23,101.67, were outstanding and unpaid on December 29th, 1880. Chas. Ogles debt amounting to $2,588, was also outstanding. (Stuart's deposition, record page 232.)

Peyton's salary, taxes and insurance, and $1,000 due Carrington and Gordon, also remained unpaid, and amounted to the sum of $10,000 more; (see Peyton's deposition, page 259) thus making about $33,101.67 not taken into the estimate. The sum of all these items thus proven by Stuart and Peyton themselves to have been outstanding and unpaid on December 29, 1880, is $72,689.67.

"The profits of the year 1880 had been expended when the new company was organized. We expected that the *unpaid debts*

of that year would be paid by the introduction of the new capital into the company." (See Stuart's deposition, record page 162.)

In turning over the property to the new company in December, 1880, they were to pay the floating debt, as well as the vendor's lien. (See Stuart's deposition, record page 165.)

When informed that no memorandum appeared on the minutes, showing how the capital stock of $150,000 could be issued as paid up stock upon payment of $4,000, and asked if he could furnish the items and calculation, Stuart replied that he did not do the summing up, and could not furnish a copy of it—that Camden did the summing up." (Stuart's deposition, record page 162.)

"I don't remember the amount of the cash payment to the court in the Gay suit. It was paid by Camden, Peyton and myself, and out of the $50,000 that was paid in—meaning the $50,000 mentioned in the charter as paid in on the capital stock." (See Stuart's depo., Record page 167.) Stuart, however, on page 230 record, testifies that this sum so paid to the commissioners amounted to $16,000, and he also says—page 167 of record—that $8,000 was paid him in 1880 on vendor's lien. Geo. L. Peyton, the superintendent of the company, testifies on this subject as follows:

"The balance sheet was made out by the bookkeeper, and showed $56,000 of profits at the end of the season. None of the expenditures for repairs and improvements were included in it. There was not a profit of $56,000. There was a considerable amount of indebtedness, remaining unsatisfied at the end of the season 1880, over and above the purchase money agreed to be paid Stuart. A considerable amount of that indebtedness in the shape of renewed notes, remains still unpaid. The company at the end of the season of 1880, was unable to pay its outstanding liabilities. (Peyton's first deposition, record page 180.)

"The debt of the company continually increased in 1880, 1881, and 1882. No member of the company ever examined the books of the company." (Peyton's first deposition, record page 183.)

"I do not think the Greenbrier White Sulphur Spring real estate would have sold for $390,000 on December 31st, 1880.

I had been managing the property from 1867, and had a good idea of its value. I doubt whether the company, had its real and personal assets been sold, would have been able to pay its debts at any time from its organization to the appointment

of a receiver, unless purchaser had received the benefit of the long credit on $200,000; that would have helped the matter very much." (Peyton's deposition, record pages 255 and 260.)

"The reason why so large a showing of profits was originally shown by the balance sheet of 1880, was that the company expected to have stock upon the market, and in order to make it as inviting as possible to capitalists to invest, it was necessary for the balance sheet to show as good a showing as possible." (Peyton's deposition, record page 260.)

In answer to the question how it was he reported such a balance sheet as the one showing $56,000 of profit, Peyton says: "I can recall that the bookkeeper presented the balance sheet to the corporation, and it was discussed. I reported nothing except what the bookkeeper reported to me. I never claimed to be a bookkeeper myself, and have no pretension of that sort." (~~Pages 85 and 86.~~) That there never was a definite statement of the financial condition of the company presented to the board; that the treasurer never gave bond, and that they never limited the issue of notes to $50,000, all of which were required on the by-laws of the company. (See Peyton's dep, record, p. 260.)

"You have already stated, in answer to the fourteenth question, that the company expected to have stock upon the market, and in order to make it as inviting as possible to the capatalists, it was necessary that the balance sheet make as good a showing as possible, or words to that effect. When you say that the company expected, please state what members of the company you refer to, and please state whether Mr. Morrison, book-keeper, was informed of the desire of the company and was he instructed so to make his entries upon the book as to make the good showing so much desired? State also whether he complied with those instructions and made his entries, and final the balance sheet, accordingly?"

Ans. "I referred to all the members of the company—Stuart, Matthews, Camden, and myself—but we never intended to have any improper entries made. Mr. Morrison was informed by me of the necessity of having the balance sheet show as good a profit as possible, and I very distictly remember to have instructed him as to the item of $11,000 upon 'board account,' and may have done so on others points, that I don't remember. I think Mr. Marrison made the entries and balance sheet accordingly."

"Were Stuart, Camden, and Matthews cognizant of the fact that you have stated in regard to the item of $11,000, just mentioned?"

Ans. Gov. Matthews, who was living at the Springs, I know was, and when the balance sheet was presented that item was dis-

cussed and the balance sheet was left as it now stands." (Peyton's dep. Record 261.)

H. B. Boudar, the expert book-keeper, testifies as follows:

"I have within the last two months made an examination of the books of the G. W. S. S. Co., by the request of the Special Commissioner Leake, at his office in this city, for the purpose of making off a correct balance sheet of the business of the said company for the year 1880. I examined the ledger, journals and cash books (two of the latter) as to all transactions during the the year 1880, and the same books as to all subsequent entries which threw light upon or explained the transaction of the company for the year 1880. I made a statement which is filed with Col. Peyton's dep. as 'Exhibit Boudar No. 1.': This is a correct statement, qualified by the suggestion made in said statement." And he subsequently made a statement, sustained by the deposition of Col. Peyton, which is filed with his own deposition as 'Exhibit Boudar No. 2' (See Boudar's dep. Record p. 263.)

His statement shows a balance of only $4,251.88 profits for the year 1880 from the company's books, and does not take in consideration the number of outstanding debts and notes. (Exhibit Boudar No. 2, Record p. 293).

At the end of "Exhibit Boudar No. 1," Boudar states: "If the actual figures could be ascertained as regards those amounts now in doubt; it would be shown that very little, if any profit was in reality made during the year 1880."

Stuart in one of his depositions (See deposition filed with Leake's report, ~~pp. 98 and 99~~) claims that the net amount which was paid him under the agreement of Jan. 30, 1880, was $390,942.89, after paying expenses for sale.

Now, the expenses of sale, which amounted to $16,000, were paid by Camden, Peyton and Stuart during the year, and this $16,000 is a part of the sum claimed to have been paid in on the capital stock during the year 1880 (See Stuart's dep., Record p. 167).

The G. L. Peyton & Co. furniture was bought for $35,000 in order to prevent the member of that firm from bidding at the judicial sale of the property in the Gay suit, and from afterward putting in an upset bid. (See Peyton's dep., pp. 254 and 255). Peyton did not think it would have sold at the Springs for more than $15,000. The larger part of said furniture was laid aside and never used, but that was for the reason that the company had not increased its earning capacity, and had bought a large quantity of new furniture, and the old had to be removed to make room for the new. (Same dep., p. 255).

Judgments have subsequently been procured against both Camden and Stuart for a part of the purchase money of this furniture, and these are the debts that they claim should be offset against their unpaid subscription to the capital stock.

The testimony that bears upon the stock subscription to the first issue of stock has been thus given at length, because it speaks so forcibly for itself that it scarcely need be commented upon.

It will be seen that all of the elements of value which Stuart enumerates as justifying the issue of the $150,000 of original stock, as full paid stock, have been proven to have no foundation in fact, and proven by the books of the company and the testimony of the defendants themselves.

1st. As to the $70,000 claimed to have been paid in in money. Admit for the sake of argument, that it was paid in, and all of it went to the purchase of furniture and improvement of the property. Did not Stuart receive a bonus of $50,000 and the expenses of sale, $16,000, making an actual bonus of $66,000, and making the real estate cost the company $406,000. Now allowing nothing for wear and tear and repairs, which, with such property, is always a large per centage, this would only leave $4,000, in *value* or *moneys worth*, and an allowance of one per cent. for necessary repairs alone on the real estate, which did not enhance its market value, but simply preserved it, would wipe this sum out.

But Stuart and Peyton themselves prove, as above set forth, that $72,689.67 of the indebtedness of 1880 remained due and unpaid on Dec. 29, 1880, and that this with other obligations was assumed by the new company.

In addition to this $8,000 of the $50,000 claimed to have been paid in 1880, went to Stuart as a partial payment on the vendors lien, and $16,000 went to the commissioner's of sale in the Gay suit to pay the expenses of said sale, these two items making together $24,000, this from the $70,000 would leave only $46,000, whereas a bonus of $50,000 was paid Stuart on the purchase price of the real estate, and by their own testimony $72,689.67 and other obligations were due unpaid and assumed by the new company on Dec. 29, 1880.

This view of the case was substantially sustained by the court below in its opinion, but in order to be perfectly safe and right in case of an appeal appellees only took a decree for the amount of unpaid subscription less the largest sum claimed by any of the subscribers to have been actually paid in, in other words, in the decree appellees adopted the report of comr. Leake (See Record pp. 221 and 222.) This report adopted *Stuarts stetement*

from the books of the company given on page 230 of Record. *Stuart there testifies that $69,000 was paid prior to Dec. 31. 1880.* That $50,000 was paid prior to Dec. 1st, 1880, and on Dec. 23rd, 1880, $20,000 was to have been paid but H. M. Matthews only paid $3,000, so that only $19,000 was in fact then paid. Comr. Leake also allowed the $4.251.68, profits for 1880 as found by the expert Boudar; and reported that $76,748.32 was to the indebtedness due by the following parties: W. A. Stuart, $18,937.08; Geo. L. Peyton, $18,937.08; H. M. Matthews, $19,937.08; J. N. Camden, $9,495.12, and Wm. P. Thompson. $9,441.96, with interest on all amounts from Dec. 31st, 880. The books and Stuart are so entirely sustained by the following evidence of Stuart, which is so important as bearing upon the actual agreement between the parties at the time of the organization of the company that we will be pardoned for giving it in full. *The documents referred to are dated* Dec. 6th, 1880.

9th question. "I find that in the certificate of incorporation a *copy of an agreement to become a corporation by the name of the Greenbrier White Sulphur Springs Company is therein copied, and that in that agreement Geo. L. Peyton, J. N. Camden, W. P. Thompson, H M. Matthews and yourself agree to form a corporation*, the capital stock of which is fixed at $150,000, and *that the whole had been subscribed for by said persons, and that $50,000 of the subscription had been paid.* See the minutes of the Greenbrier White Sulphur Springs Company, West Va., pages 5 and 6; and that the privilege of increasing said capital stock was also provided for in said agreement. When this declaration was made as to the payment of the $50,000, was not reference had to the $50,000 which was paid during the season of 1880, as you have already stated by the subscribers ?"

Answer. That is my understanding.

The agreement just referred to is required by Sec. 6 of Chap. 53, Code West Va., before the organization of the company and is in proper form. Sec. 8, Chap. 53 is as follows :

The agreement shall be acknowledged by the several corporators before a justice, notary, or judge, and such acknowledgments shall be certified by the officer before whom they are made. If any such acknowledgment be made before a justice, notary, or judge of another state or country, proper evidence of the official character of the officer certifying the same shall accompany his certificate. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to be paid *on the capital has been in good faith paid in* for the purposes and business of the intended corporation, without any intention or understanding that the same

shall be withdrawn therefrom before the expiration or dissolution of the corporation

Thus it will be seen that the agreement of the parties sworn to by all at the time of applying for the charter of the company, and which is best evidence on the point, shows clearly that the stock was issued for cash, and not for property, the realty was turned over by Stuart for cost and 66,000 bonus and a vendor's lien given therefor, and no more, as his deed to the company shows; and the personalty was turned over by the copartnership to the company and obligations largely in excess of its value assumed.

Peyton, the superintendent, who had managed and lived on the property for twelve years testifies that the real estate would not have brought $390,000, much less $406,000 on Dec. 31st, 1880, and that he did not think that all the assets, real and personal, would have paid off the liabilities.

2d. Take the next *element of value* mentioned by Stuart, —the profits of the year 1880—$56,000. Stuart and Peyton both prove that these were not nett profits, but on the contrary prove that $72,689,67 and other liabilities were due unpaid and assumed by the company when organized-

Boudar by a statement from the books, proves that the books only show a profit of $4,251.68, and while counsel for Stuart in his exceptions undertakes to belittle this expert, and to say that only one as skillful as himself could explain how he arrived at this balance, we must concede that his only *motive* must have been to arrive at a correct balance; on the contrary, we must also concede that it does not require one either skilled or an expert to explain how the balance of $56,000 of profits was arrived at after reading the testimony of the superintendent of the company; the members of the company appear to have been dazzled with the brilliancy of the bubble they themselves had created, and could only see reflected from it numberless capitalists eager to come in; and their only thought appears to have been, by any means, to plant themselves on a good ground floor, and thus protect themselves from these capitalists and their creditors,

Stuart and Peyton prove that these were a large number of notes and other obligations of the company outstanding and unpaid at the end of 1880, and Peyton proves that the company could not then meet its obligations; so that instead of a balance of profit there was, *in fact*, a balance *of loss*.

3d. Take the next *element of value*. The immense earning

capacity of the property as demonstrated by the profits of 1880.

This must of course fall with the disapearance of said profits and proof of over $72,000 of outstanding indebtedness.

4th. Stuart then says, "We also regarded the contract made between ourselves on January 30, 1880, together with the loss of time and trouble to which we were subjected, as elements of value."

Concerning the contract enough has already been said to demonstrate that it was a burden rather than a benefit to the company. As to the twenty years time on $200,000, the corporation had to pay 6½ per cent. thereon, and it was no material advantage except to parties who looked upon credit as everything.

Concerning the time and trouble of the officers, directors, and shareholders, it may be said that this is expended by persons occupying the same relative positions in all corporations of this character, and the return, which they expect, comes in the shape of legitimate dividends upon their stock after it is paid for. They receive the benefit of all money made, and it is for this purpose they conduct the corporation, but it is respectfully submitted that the time and trouble thus expended is never an element of value in paying up the unpaid subscription to the capital stock.

5th. The $3,000 actually paid in of the $4,000 mentioned in the resolution of December 30, 1880, is the only money or moneys worth ever paid up on said subscription of $150,000. All the rest having been paid prior to the organization of the company and is more than offset by greater liabilities assumed.

It is respectfully submitted therefore that $147,000 of said original subscription of $150,000 still remains due and unpaid, but appellees for reasons before mentioned adopted Stuart's own deposition and statement from the books of the company (see record p. 230) and Leake's report made in accordance therewith (see record p. 222) and only claim the unpaid subscription of $76,748.32 with legal interest thereon from Dec. 30, 1880.

The defendant Stuart, in his exceptions, and the defendant Camden, in brief of counsel, undertake to defend the conduct of the stockholders in this particular, upon the ground that there was *an agreement of sale* of the real and personal property, by Stuart, Camden, and Peyton to the corporation, when formed, in consideration of $390,000 and $146,000 of stock as full paid up ; and even though this may have been excessive, having been done in good faith, it was binding upon the stockholders and

creditors.

The facts proven establish that no such agreement was ever made. To begin with, the agreement of January 30, 1880, showed that the company was to receive the real estate for $390,000, and no more.

The deed from Stuart and wife to the company, mentioned this consideration and no other, (see Record, p. 178.) The sworn agreement of Dec. 6th, 1880, which accompanies the application for the charter, under which the company was organized, the Record of the Minutes of the company on Dec. 29th, 1880, and Stuart and Peyton's depositions all disprove it. Record p. 160 and Min. Book, p. 13. It is true Camden, in his answer, to which affidavit is expressly waived in the Knabe bill, does for the first time, set out some resolutions, which he claims were adopted by the company on Dec. 29th 1880, but no such resolutions were ever adopted by the company as is shown by a critical examination of the entire Minutes of the company, no resolution of that character appearing anywhere on the Record or Books of the company, *on the contrary the minutes of the company of Dec. 29th, 1880,* contains the resolution requiring the payment of $4,000, but none such as those set forth by Camden. The written agreement of Jan'y 30th, 1880, and the deed of Stuart above referred to, and the agreement of Dec. 6th, 1880, sworn to by Camden himself and by him signed, as well as the depositions of both Stuart and Peyton refute the existence of such an agreement as set out in the resolutions. It is worthy of note that neither Stuart or Peyton ever referred to such resolutions, though struggling for two years and a half to free themselves from liability on their stock, and that Camden should have only filed them with his answer as late as Dec. 17th, 1887, when the case was finally argued on Jan'y 7th, 1888, and Counsel all living at a distance from Parkersburg had never seen his answer until the day of argument, and then had no right to cross examine him relative thereto. The court filed its opinion one month after the argument, on Feb'y 9th, 1888, and after considering said Camden's answer, together with the other evidence, has this to say; "But $150,000 worth of stock was issued and whether the property transferred to the company was worth more or less than *$50,000 the parties put that valuation upon it, and so for as the creditors are concerned that must be held to be all that was paid in as subscription to the stock.*"

The effort to make it appear that there were other considerations of value from Camden, Stuart and Peyton to the new company, which should be credited in payment of stock, such as the

book accounts and profits of the year preceeding when the corporators conducted the business of the Greenbrier W. S. Springs, and the experience and goodwill which they transferred to the new corporation, is not justified by the evidence. It is doubtful whether there had been any profits of the year before, *and the instruction of the parties to their agent to make out a statement making as good a showing as he could for them, to aid in the appreciation of the stock of the new corporation, shows there is little reliance to be placed on that statement*"

"Be this so or not, we are of opinion that whatever of interest at the date of the acceptance of this charter and the organization of this company the parties had in the White Sulphur Springs, to-wit: Dec, 29th, 1880, they transferred to it and received stock therefor to the extent of $50,000, which was the value they themselves had placed upon such property and interest. There is no other way to account for that credit, for it is not pretended it was paid in cash and the company received no other consideration from the three parties above named at the time of its organization. Subsequently to this, that is on the day following, the stockholders were required to pay up their proportions of $4,000, agreed to be paid, which was declared to be in full payment of $150,000 worth of stock. Whatever of this sum was paid in by either of the stockholders, we think should be credited to him on his stock payment." (see record 346)

The brief of counsel for appellant Camden is based solely on the existence of this alleged agreement, and as the evidence establishes that there was no such agreement, the argument it is respectfully submitted must fall with the disappearance of the agreement, and consequently the principles of law and cases cited do not apply to the facts in this case.

The evidence shows that the new corporation assumed a vendor's lien of $390,000, $50,000 of which was bonus, that $16,000 was paid on expenses of sale in 1880, that $8,000 was then paid to Stuart on realty, that $72,600 of debts and other obligations, were assumed by the new ~~Peyton~~ company, making a total of $486,000, and all that it was ever claimed was paid in during 1880 was $69,000, giving full creeit for this it leaves $417,000, whereas Peyton testifies that the property, real and personal, would not have brought $390,000 on Dec. 29, 1880. The issue of the $150,000 of stock was no part of the consideration for the transfer of the property, and even if such a sale had been agreed upon, to claim that it was *bona fide* after the figures set out above and after what has been proven about the effort to appreciate the stock by the fictitious profits of 1880. It is respectfully submitted

will not be entertained by this court for an instant. Appellants counsel repeats often the allegation of the Knabe bill that the real estate was considerably enhanced in value by the improvements of 1880, and that new furniture was bought during the year, but the improvements were made and furniture bought on credit, and these debts were assumed by the new company as is proven by Peyton, general manager of the company.

It is respectfully submitted that there are only two possible deductions from tne evidence written and oral in this case. The one is that of Commissioner Leake that the issue was for cash, which view is sustained by the agreement under seal and acknowledged Dec. 6th, 1880, in which the incorporators swear that they have subscribed for $150,000 of stock, and have paid in on said subscription $50,000, $19,000 more having been paid on Dec 23, 1880. (See Leake's report, p. 222.) This view is also sustained by the statement from the books of the company by Stuart. (See Record. p. 230).

The other deduction is that drawn by the court below in its opinion that even if there was an issue of stock for property and other alleged services, the valuation put upon this property and services by the incorporators themselves in the agreement of December 6, 1880, on which the charter was granted and the company organized on the 29th of December, 1880, was $50,000; this is the only way to account for their claiming this $50,000 as paid in, and it should be remembered that at least two of the incorporators had to swear to the accuracy of this allegation, and that it was *bona fide*. Stuart in his deposition says this was correct, and explains that $19,000 more was paid in on the 23rd December, 1880, and so far as the creditors are concerned, it is respectfully submitted that the incorporators are now stopped from placing a greater valuation upon the property than they did at the time, and the above items must be held to be all that was paid in on said stock.

Let us now consider the first deduction from the evidence mentioned above namely, that the issue of $150,000 of stock was for cash. "When the issue of stock was for cash, under an agreement that only part of the par value need be paid, corporate creditors may compel the persons ~~recovering~~ receiving the stock to pay the unpaid full par value. Such a contract though binding on the company is a fraud in law on its creditors, which they can set aside; when their rights intervene and their claims are to be satisfied, the stockholders can be required to pay their stock in full. Scoville vs. Thayer, 105 U S., p. 143, also Cook on stock and stockholders section 42, where the long line of U.

S. decisions on this point are cited.

That an agreement that shares shall be deemed fully, paid up is invalid as to creditors and a breach of trust see also Sawyer vs. Hoag, 17 Wal. 610; New Albany vs. Burke, 11 Wal. 96; Burke vs. Smith, 16 Wal. 390. Morawetz sec. 824, and Thompson's L. of S. sec. 329. In order to enforce this liability it is not *necessaryto prove that fraud entered into the transaction where the issue was for cash.* Since there is no possibility of mistaken judgment in the value of the thing received in payment, Cook on stock and stockholders, section 44 citing, Flinn vs. Bagley, 7 Fed., Rep. 785.

Under the first and most reasonable deduction from the facts that this is a cash issue of stock the law is clear and the authorities overwhelming as to the liability of the stockholders in this case for their unpaid supscription and it is needless to add more.

Now as to the second deduction that even though the stock was issued for property, the stockholders themselves valued their property at $50,000 and afterward paid $19,000, and are liable for the residue of the whole issue of $150,000, it is equally needless to cite authorities, for the amount being certain and not here disputed, this deduction is because of the values being fixed brought within the scope of the principle and the authorities cited to sustain a cash issue.

However upon the general principle of the payment of stock subscription in specific property it may be well to add something.

In Clarke vs. Bever 139, U. S. p. 112. Justice Harlan in delivering the opinion of the court says: "We must not be understood as modifying in any respect the principles laid down in the cases above cited, nor the salutary rule laid down in Sawyer vs. Hoag that when the interest of the public or of strangers is to be affected by any transaction between the stockholders owning the corporation and the corporation itself, such transaction should be subjected to rigid scrutiny and if found to be infected with anything unfair toward such third person calculated to injure him or designed to intentionally and in equitably to screen the stockholder from loss at the expense of the general creditor, it should be disregarded or annulled so far as it may inequitably effect him. These principles were reaffirmed in Richardson vs. Green and should not be relaxed in any case in which they may be applied with justice.

A rigid rule applies to stock subscriptions payable in specific property. Stock subciptions can be paid in specific property, but this rule is of course subject to the exception that the transaction may be impeached for *fraud*, and stockholders may be charged at suit of creditors by showing that property turned in was of less value than the price at which it was turned in,

and it seems that a showing of this kind may be made without any allegations of fraud. (See Thompson's Liability of Stockholders, § 127, citing Boynton v. Hatch, 47 N. Y. 225.)

The section Morawatz, cited by both counsel for defendence, is one of the best authories for the creditors in this case, and concludes with the following significant language: "And the courts have inflexible enforced the rule, that payment of stock subsriptions is good as creditors only where payment has been made in *money*, or in what may fairly be considered *moneys worth*." (Morawetz, § 825.)

Again, the use of the word "fraud" or fraudulent (in the pleadings), in order to characterize the transaction or specify the ground of relief, is not absolutely necessary; an allegation of the facts which constitute the frad are sufficient. (See Wait on Fraud, Con. § 141. citing Whittlesay v. Delaney, 73 N, Y. 575; Hamlen v. McGillleuddy, &c., 62 Maine, 268, and other cases. See also Keran v. Trice, 75 Va. 698, and Almond v. Wilson. id. 613.)

That the unpaid subscriptions and eutire capital stock are a trust fund for the befit of cseditors, and to be distributed between them "pari passu," has become well established by the repeated decisions of the Supreme Court of the United States and other courts. See Sawyer v, Hoar, 17 Wal. 610; Lamb v. Laughlin, 25 W. Va. p. 320–322 (this last case holds thrt the entire assets are also a trust fund); Sauger v. Upton, 91 U. S. 56; Scammon v. Kimball, 92 U. S. p. 366; County Morgan v. Allen, 103 U. S, p. 498.

The case of Lamb v. Laughlin, 25 W. Va. 320–322, decides that all of the assets of an insolvent corporation are a trust fund for the benefit of creditors of the corporation; that the directors are the trustees for the creditors, and that the directors of an insolvent corporation cannot prefer themselves.

This would sufficiently dispose of the right to offset claimed by Camdem, but again as Judge Bond states in his opinion the judgement against Camden was for furniture, taken into consideration when the agreement and valuation of Dec. 6th, 1880, was made and allow such an offset now would be payiug him twice for the same property.

Stuart testifies (pp. 35 and 36 of his deposition), that the cash payment upon the purchase-money was paid by Camden, Peyton and himself during 1880, out of the $50,000 claimed to be paid in on the capital stock, but says he does not remember what it amounted to; both Peyton and Stuart prove that there were large outstanding liabilities of the company due and outstanding December 31, 1880,

Now it is respectfully submitted that the burden of proof is upon the directors and shareholders to show that they paid in money or moneys worth, and if they fail in this it is at their peril. A rigid rule applies to all such dealings with the capital stock of a company. (See Sawyer v. Hoag, 17 Wal. 610.

The Constitution of West Virginia, Art. II, Sec. 2, has fixed the liability of stockholders in that State by declaring them liable for "the amount of stock subscribed and unpaid and no more."

It was the opinion of Comr. Leake which opinion was concurred in by counsel for all parties in interest that under the West Virginia laws only the original subscribers and not the assignees or transferrees of stock were liable for the unpaid subscriptions Comr. Leake so reported and no exception was taken by any one to his finding on this point.

The attention of the court is respectfully called to the fact that though these causes were pending, the Stuart bill for over four years, and the Knabe bill for two years, and personal service was made on J. N. Camden in the Knabe cause. Though Comr. Leake's report was pending before him for one year with personal service on Camden and publication in the Parkersburg State Journal for four successive weeks. J. N. Camden did not appear or make any exception before the master, nor did he file any exceptions to said masters report within the thirty days allowed by law. Fifty-two days after said report and when it stood confirmed as to him he petitioned for leave to file his answer, which was not filed until Dec. 17, 1887, whereas the case came on for final argument on January 8, 1888, it is submitted that one guilty of such laches should have no standing in court.

In practice it is not usual for the courts to reject the report of a master, with his findings on the matter referred to him, unless exceptions are taken to them and brought to his attention, and the findings are found to be unsupported or essentially defective. Kimberly vs. Arms, 129 U. S. 512.

The conclusions of a master in chancery depending on the weight of conflicting testimony have every reasonable presumption in their favor, and are not to be set aside unless there clearly appears to have been error or mistake on his part. Tilghman vs. Proctor, 125 U. S. 136.

See also Kimberly vs. Arms, 129 U. S. 512.

In conclusion, it is respectfully submitted that the foregoing statement of the facts and the law in these causes conclusively establish that the decree of the Circuit Court of the U. S.

for the district of West Virginia, entered on the 11th day of February, 1888, at Parkersburg, W. Va., in which said decree the report of Commissioner Leake, so far as it ascertained and reported a liability upon W. A. Stuart for $18,937.08, and upon Johnson N. Camden for $9.495.12, upon account of their unpaid subscription to the capital stock of the Greenbrier White Sulphur Springs Company as of the 29th of December, 1880, from which date the several sums bear interest at the rate of six per cent. per annum, until paid, was approved and confirmed; and which further adjudged that the said Stuart and Camden pay to the Greenbrier White Sulphur Springs the said several sums ascertained to be due by them as aforesaid with interest on each of said sums from 30th day of December, 1880, until paid, should be sustained and affirmed by this honorable court.

Respectfully submitted,

TAZEWELL ELLETT.

Of Counsel.

with H. H. Marshall